DOCUMENT RESUME

ED 456 006 RC 023 131

AUTHOR	Molbech, Anette, Ed.
TITLE	The Indigenous World, 2000/2001 = El mundo indigena, 2000/2001.
INSTITUTION	International Work Group for Indigenous Affairs, Copenhagen (Denmark).
SPONS AGENCY	Royal Danish Ministry of Foreign Affairs, Copenhagen.; Norwegian Agency for Development Cooperation, Oslo.
ISBN	ISBN-87-90730-48-8; ISBN-87-90730-49-6
ISSN	ISSN-0105-4503; ISSN-1024-4573
PUB DATE	2001-00-00
NOTE	925p.; Photographs and maps may not reproduce adequately. For 1999-2000 edition, see ED 447 982.
AVAILABLE FROM	IWGIA, International Secretariat, Classensgade 11 E, DK-2100 Copenhagen, Denmark. E-mail: iwgia@iwgia.org ($20.00 for either English or Spanish version, plus shipping).
PUB TYPE	Reports - Descriptive (141) -- Multilingual/Bilingual Materials (171)
LANGUAGE	English, Spanish
EDRS PRICE	EDRS Price MF06 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS	*Activism; American Indians; *Civil Liberties; Conservation (Environment); *Cultural Maintenance; Elementary Secondary Education; Ethnic Discrimination; Foreign Countries; *Indigenous Populations; *Land Use; Language Maintenance; Language Minorities; Politics; *Self Determination
IDENTIFIERS	*Land Rights; Oppression; United Nations

ABSTRACT

This annual publication (published separately in English and Spanish) examines political, social, environmental, and educational issues concerning indigenous peoples around the world in 2000-01. Part 1 describes current situations and events in 11 world regions: the Arctic; North America; Mexico and Central America; South America; Australia and the Pacific; north, east, central, and southern Africa; south Asia; and east and southeast Asia. In general, indigenous peoples worldwide were dealing with issues related to land rights, self-determination, relations between central government and indigenous communities, outright oppression and violence, environmental degradation and destruction by economic development projects, communal rights, women's rights, access to appropriate education and to health care, and preservation of indigenous cultures and languages. Articles of educational interest on the Arctic and the Americas discuss the shortage of Greenlandic-speaking college graduates in Greenland and related issues of language use; support for Saami language use in Sweden and Finland; shortages of schools and teachers in indigenous areas of arctic Russia; implementation of Inuit traditional knowledge and the Inuktitut language in all government functions in Nunavut; efforts of the Innu Nation in Labrador to gain control of education; poor condition of educational facilities on U.S. American Indian reservations; little progress on Mayan demands for culturally relevant education in Guatemala; controversy over scientific research on indigenous lands in Venezuela; and Mapuche student protests in Chile. Other education-related articles discuss efforts to preserve Amazigh culture and language in Morocco, Algeria, and Libya; implementation of education programs for San children in Namibia; native language instruction in Botswana

Reproductions supplied by EDRS are the best that can be made
from the original document.

villages; demands for equal language rights in Nepal; need to establish a new education system and language policy in East Timor; and educational policies for ethnic minorities in Cambodia and Vietnam. Part 2 reports on United Nations work on indigenous rights and the proposed integration of nonindependent countries in U.N. activities. (SV)

Reproductions supplied by EDRS are the best that can be made
from the original document.

ED 456 006

The Indigenous World, 2000/2001 = El mundo indigena, 2000/2001

Anette Molbech, Editor

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☐ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

PERMISSION TO REPRODUCE AND DISSEMINATE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

L. Dahl

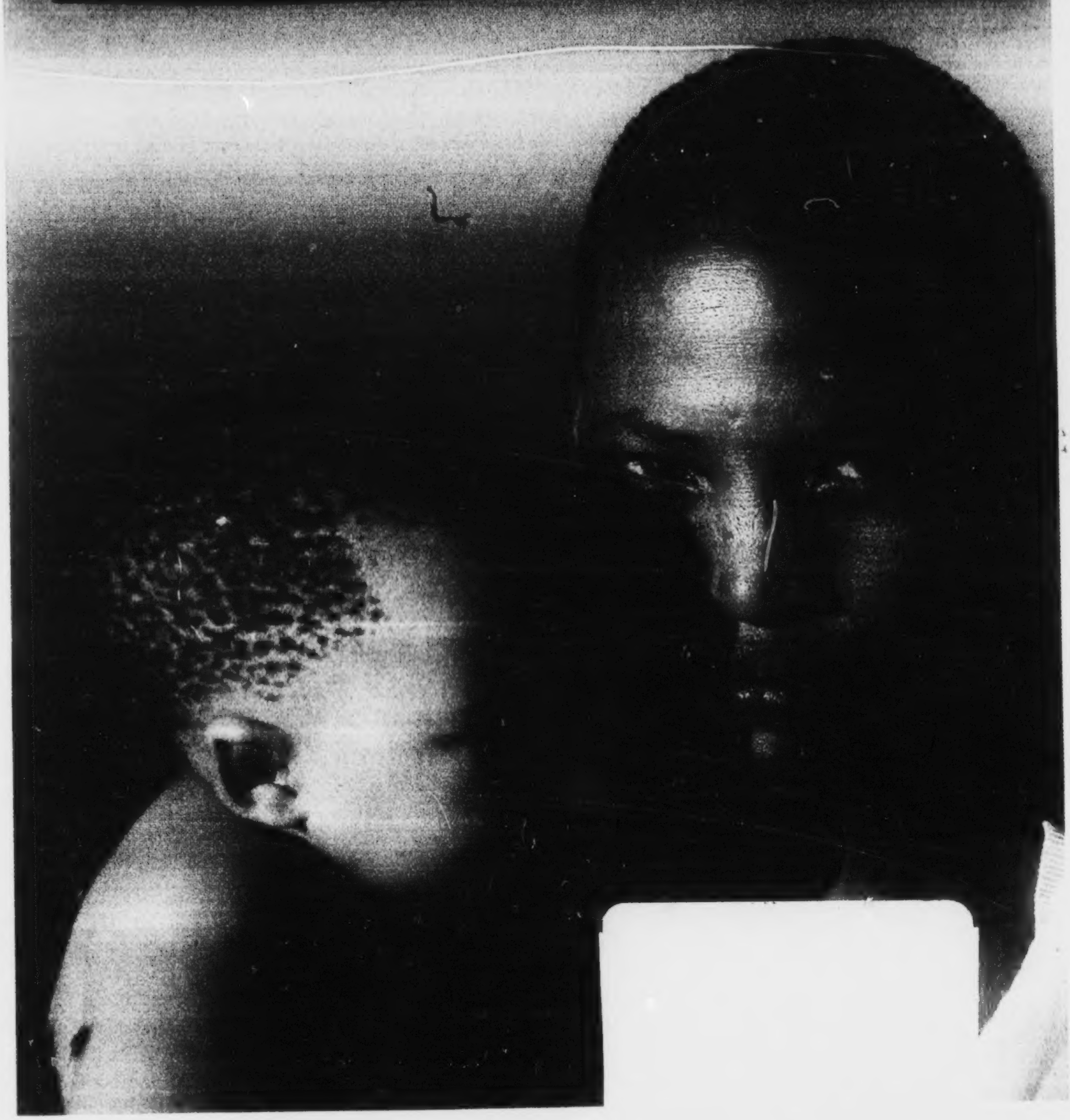
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

2B

RC 023 131

BEST COPY AVAILABLE

THE INDIGENOUS WORLD 2000-2001



BEST COPY AVAILABLE

THE INDIGENOUS WORLD 2000/2001

IWGIA
Copenhagen 2001

4

BEST COPY AVAILABLE

THE INDIGENOUS WORLD 2000/2001

© **Copyright:** The Authors and IWGIA (The International Work Group for Indigenous Affairs) 2001 - All Rights Reserved -

The reproduction and distribution of information contained in THE INDIGENOUS WORLD, INDIGENOUS AFFAIRS, and the IWGIA BOOKS is welcome as long as the source is cited. However, the reproduction of whole BOOKS should not occur without the consent of IWGIA. The opinions expressed in IWGIA publications do not necessarily express those of the Work Group.

Compilation and editing of this edition of The Indigenous World has been coordinated by Anette Molbech.

Cover and Typesetting: Jorge Monrás
Spanish translation: Mario Di Lucci
Spanish proofreading: Janet Ferrari
English translation: Elaine Bolton
English proofreading: Elaine Bolton & Birgit Stephenson

Regional editors:
The Arctic & North America: Kathrin Wessendorf
South America; Mexico & Central America;
The Pacific & Australia: Diana Vinding
Asia: Christian Erni
Africa: Marianne Jensen
Indigenous Rights: Lola García-Alix

Prepress and Print: Eks-Skolens Trykkeri, Copenhagen, Denmark
ISSN: 0105-4503 - **ISBN:** 87-90730-48-8

Cover Photo: By Arthur Krasilnikoff, Female Bushman with child, Botswana, Africa.

IWGIA
INTERNATIONAL WORK
GROUP FOR INDIGENOUS AFFAIRS
Classensgade 11 E, DK 2100 - Copenhagen, Denmark
Tel: (+45) 35 27 05 00 - Fax: (+45) 35 27 05 07
E-mail: iwgia@iwgia.org - www.iwgia.org

*This book has been produced
with financial support from the
Danish Ministry of Foreign Affairs and from
the Norwegian Agency for Development Cooperation*

CONTENTS

Preface 8

Contributions 12

PART I: THE INDIGENOUS WORLD BY REGIONS & COUNTRIES

The Arctic 24
- The Artic Council 24
- Greenland 26
- Sápmi - Sweden, Russia, Finland 30
- The Indigenous peoples of Russia 38
- Nunavut 43
- Nunavik 46

North America 50
- Canada I - First Nations 50
- Canada II - First Nations 54
- Canada III - North West Territories 56
- Canada IV - The Innu Nation 59
- The United States of America 63

Mexico and Central America 72
- Mexico 72
- Guatemala 82
- Nicaragua 88
- Costa Rica 95
- Panama 100

South America 106
- Venezuela 106
- Colombia 112
- Ecuador 120
- Peru 127
- Bolivia 136
- Paraguay 147
- Brazil 153
- Argentina 161
- Chile 167

Australia and the Pacific 176
- Australia 176
- Aotearoa (New Zealand) 184
- West Papua 192
- Bougainville 195
- The Solomon Islands 197
- Kanaky (New Caledonia) 201
- Te Ao Maohi (French Polynesia) 203
- Tokelau 204
- Fiji 205
- Tonga 212
- Marshall Islands 216
- Guahan (Guam) 219
- Ka Pae'aina (Hawai'i) 221
- Rapa Nui (Easter Island 223

North Africa 226
The Amazigh Peoples 226
East Africa 236
Ethiopia 236
Kenya 243
Tanzania 251
Central Africa 262
Rwanda 262
The Democratic Republic of Congo (DRC) 263
Burundi 265
Uganda 266
Cameroon 268
Southern Africa 272
Namibia 272
Botswana 277
South Africa 284
South Asia 290
Bangladesh 290
Nepal 297
India 304
Sri Lanka 322
East Asia & Southeast Asia 328
Japan 328
China 331
Taiwan 335
Philippines 339
East Timor 349
Indonesia 355
Malaysia 368
Thailand 374
Cambodia 379
Vietnam 387
Laos 393
Burma 403
Nagalim 407

PART II: INDIGENOUS RIGHTS

Report on the 6th session of the Commission on Human Rights Working Group on the Declaration on the Right of Indigenous Peoples 414

The UN Permanent Forum on Indigenous Issues 448

Towards Integration of Non-Independent Countries in the United Nations System 455

PART III. IWGIA PUBLICATIONS

English and Spanish publications 2000/2001 464
Subscription Rates 467

Contact addresses - IWGIA 468

PREFACE

The intention of *The Indigenous World 2000/2001* has been to try to reflect the most crucial developments that have affected indigenous peoples in the different regions of the world in the last year or so.

Therefore we are extremely grateful for the contributions we have received. Without these this book could not have been published and our intention of mirroring the progress and setbacks of the indigenous world would have been impossible to get even close to.

To report on the world comprehensively is an ambitious task – and we are well aware that this issue of *The Indigenous World* has its omissions and insufficiencies in terms of covering issues, peoples and countries. Also, the articles naturally reflect the different points of departure that the authors have taken when writing about a specific area. We have decided to keep the articles that way as we find it important to maintain the authenticity of the reports published in this book. This may lead some readers to conclude that *The Indigenous World* is an *insider's* book that requires more than a minimum of knowledge about specific areas and peoples. However, the intention of the book is to reflect what happened or led up to the situation that a given area has found itself in during the past year – since the last edition of the book was published.

A detailed book on the indigenous world would be wonderful, but nevertheless a task that would require research resources which we do not have the capacity to meet. The contributions have been written on an entirely voluntary basis by a large number of indigenous and non-indigenous authors. We appreciate that it is at all possible to involve so many people in this book, people who use their scarce spare time to contribute to this "mosaic" of reflections on the indigenous world.

This year, we are very content to be able to cover developments in China and North America, Laos, Vietnam, New Zealand and a number of Pacific Islands which were not included last year. We would have liked to bring more detailed information about the crucial situation in Burma, however, but this proved impossible since we had very limited time to do so. We are also happy to be able to cover Ethiopia again, although the article focuses on a specific part of the country and there are other peoples and parts of the country which might have been included.

Even though we will always strive to achieve as complete a book as possible, our limited capacity does not allow us to cover the world the way it is – in all aspects. The book should be read as a dedicated effort to provide and assemble bits and pieces of a highly complex world. We would therefore appreciate your comments, suggestions and if possible your concrete contributions to next year's issue, which we hope to make ever more complete.

Anette Molbech
Coordinating editor

CONTRIBUTIONS

BEST COPY AVAILABLE

CONTRIBUTIONS

IWGIA would like to extend warm thanks to the following people and organisations for having contributed to *The Indigenous World 2000/2001*. We would also like to thank the authors who wished to remain anonymous and therefore are not mentioned below. Without their contributions this book would not have been published.

PART I

THE ARCTIC & NORTH AMERICA

This section has been compiled and edited by Kathrin Wessendorf, IWGIA Arctic Program Coordinator.

Marianne Lykke Thomsen has been associated with IWGIA for many years. She has worked for the Inuit Circumpolar Conference, the Greenland Home Rule, The Office of International Relations. Marianne Lykke Thomsen is the Greenland Home Rule representative in Ottawa *(The Arctic Council)*.

Mattias Åhrén is a Saami, working as an associate at Danowsky & Partners lawfirm in Stockholm. He also works for the Saami Council *(Sápmi,* Sweden).

Leif Rantala is a teacher of Saami language and culture at the University of Lapland (in Rovaniemi, Finland). Leif Rantala has specialized on the Russian Saami (*Russia and Finland*).

Olga Murashko is an anthropologist, co-founder of the IWGIA local group in Russia and presently a member of IWGIA's board (*Russia – Indigenous Peoples in Russia*).

Helle Høgh is a Ph.D. student at the Department of Ethnography and Social Anthropology, University of Aarhus, Denmark. Helle Høgh conducted fieldwork in Nunavut in 1996 and 1999 *(Nunavut)*.

Michael Posluns maintains a watching brief on discussions of First Nations matters in the Canadian Parliament. He is presently completing a doctoral dissertation on First Nations testimony before Canadian Parliamentary committees in the 1970s entitled *The Public Emergence of the Vocabulary of First Nations' Self-Government (Canada: First Nations Relations at the End of the Second Millenium).*

Russel Diabo is a member of the Mohawk Nation at Kahnawake in Quebec. He holds a B.A. in Native Studies from Laurentian University in Canada, and has undertaken graduate studies towards an M.A. at the University of Arizona and Carleton University in Ottawa. Mr. Diabo was the Coordinator on Indian Act Amendments for the Assembly of First Nations during 1996-97. He is presently an advisor to the Interior Alliance of Indigenous Nations in British Columbia, Canada (*Canada: First Nations Governance Act and First Nations Financial Institutions Act).*

Jim Edmonson has worked for aboriginal organizations at the national, regional and commmunity levels since 1985. He has spent much of this time as an advisor and negotiator in talks with the federal and territorial governments on land claims and self-government (*Northwest Territories*).

Georg Henriksen is an anthropologist and a professor at the Department of Social Anthropology, University of Bergen, Norway. Georg Henriksen is the Chairman of IWGIA's international board. He has worked extensively with the Innu *(The Innu Nation).*

Martha McCollough is a cultural anthropologist in the Anthropology and Ethnic Studies Department at the University of Nebraska. Her research interests include the relationships between states and nonstate societies. She is currently working on a book that explores terrorism prior to the reservation era in the United States *(USA).*

MEXICO, CENTRAL AND SOUTH AMERICA

This section has been compiled and edited by Diana Vinding, IWGIA Latin America & Pacific Program Coordinator.

Araceli Burguete Cal y Mayor is a sociologist and researcher at the Centre for Research and Higher Studies in Social Anthropology (CIESAS) and advisor to the indigenous organisation ANIPA *(Mexico).*

Kajkoj Máximo Abrahan Ba Tiul is a Poqomchi Maya philosopher and anthropologist. He has worked for the Coordinating Body of NGOs and Cooperatives – CONGCOOP – and has been a member of Nukuj Ajpop and COPMAGUA. He is currently Director of the Civil Society Dissemination Programme of the International Committee of the Red Cross and a columnist for *El Periódico (Guatemala).*

Margarita Antonio is a Miskita journalist from the Nicaraguan North Atlantic Coast and currently the Director of the Communication Programme of the University of the Autonomous Regions of the Nicaraguan Caribbean Coast, URACCAN, and editor of the newspaper *Autonomía* (Autonomy). She is the Nicaraguan representative of the International Association of Community Radio, AMARC *(Nicaragua).*

Gilbert González Maroto is an indigenous Brunca and runs the Centre for Indigenous Development (CEDIN S.A.) in Puntarenas, Costa Rica. You can visit the Centre at: http://www.cedin.iwarp.com *(Costa Rica).*

Atencio López is an indigenous Kuna and lawyer. He is President of the NGO "Napguana" *(Panama).*

Luis Jesús Bello is a lawyer, Ombudsman for the State of Amazonas and Member of the Human Rights Office of the Vicariate of Puerto Ayacucho. He is also consultant to the Regional Organisation of Indigenous Peoples of the Amazon (ORPIA) and the Permanent Commission of Indigenous Peoples of the Venezuelan National Assembly *(Venezuela).*

Alberto Achito Lubia is an indigenous Embera from Juradó (Chocó) and a distinguished leader from the Colombian Pacific. He was a founder member of OREWA, and was also its President. He is currently coordinator for environmental issues with the National Indigenous Organisation of Colombia (ONIC) and a member of the Indigenous Coordinating Body of the Pacific. His article on Colombia is dedicated to his brother, Armando Achito Lubiaza, an Embera leader murdered by paramilitaries in December 2000 *(Colombia).*

Carlos Viteri is an Amazonian Quechua from Ecuador, an anthropologist and adviser to the Quechua deputy Nina Pacari Vega *(Ecuador).*

Pedro García Hierro, a lawyer, is President of the NGO "Racimos de Ungurahui" based in Lima, Peru. He is author of the IWGIA Document *Territorios Indígenas y la Nueva Legislación Agraria en el Perú* (Indigenous Territories and the New Agrarian Legislation in Peru) (*Peru*).

Leonardo Tamburini and ***Ana Cecilia Betancour*** are both lawyers working for the Centre for Legal Studies and Social Research – CEJIS – in Santa Cruz, Bolivia. The former is Coordinator of the Indigenous Programme and the latter a volunteer from the Dutch Development Cooperation Service. The information has been provided by the CEJIS offices in Santa Cruz, Trinidad, Riberalta and Cochabamba, regions in which the institute advises indigenous and peasant organisations on issues of land titling processes and defence of their rights *(Bolivia).*

Rodrigo Villagra is an anthropologist and lawyer. He has worked for TIERRAVIVA, a Paraguayan NGO, since 1994 *(Paraguay).*

Christian Groes-Green is a student of anthropology at the University of Copenhagen. He is currently in Manaus, Brazil, doing field work among the Satere Mawe people *(Brazil).*

Morita Carrasco is an anthropologist and lecturer at the University of Buenos Aires, Argentina. She is the author of the IWGIA Document *La Tierra que Nos Quitaron* (The Land they Took from Us), which considers the conditions of indigenous peoples in Argentina *(Argentina).*

Dorthe Kristensen, M. Sc. in Anthropology from the University of London, was for many years a member of the National Group of IWGIA in Denmark. In 1999-2000 she carried out field research in Chile concerning issues of identity and politics as related to traditional medicine and religion *(Chile).*

AUSTRALIA AND THE PACIFIC

This section has been compiled and edited by Diana Vinding, IWGIA Latin America & Pacific Program Coordinator.

Peter Jull and ***Kathryn Bennett*** research and write on indigenous politics in international contexts at the School of Political Science and International Studies, University of Queensland, Brisbane, Australia *(Australia).*

Taki Anaru is a barrister and solicitor from Aotearoa/New Zealand. Until recently he was the Senior Solicitor with the Maori Legal Service. He now lives and works in the Cook Islands (*New Zealand*).

Jimmy Nâunâa is the Assistant Director - Decolonisation and Indigenous Rights at the Pacific Concerns Resource Centre (PCRC) in Suva, Fiji Islands. He compiled and edited the report on the Pacific, which also draws on contributions by the PCRC Director and colleague - Assistant Directors in their specific areas of expertise (*The Pacific Islands*).

AFRICA

This section has been compiled and edited by Marianne Jensen, IWGIA Africa Program Coordinator.

North Africa

Hassan Idbalkassm is an Amazigh from Morocco. He is a lawyer and President of the Amazigh association "Tamaynut", which he founded in 1978. He is also the Vice-President of the "Congrés Mondial Amazigh", which has a membership of more than 70 Amazigh associations in North Africa and Europe *(North Africa: The Situation of the Amazigh Peoples).*

East Africa

Nyikaw Abula Ochalla is an indigenous Anuak from the Gambela National State. He holds a degree in management and public administration from the university of Addis Ababa, Ethiopia. After his graduation he worked for both the federal and local government. He currently lives in the UK where he applied for political asylum in 1999 due to the widely reported human rights abuses and the persecution carried out by the Ethiopian government. He is a founder of the non-violent political organisation, the "Gambela Peoples Democratic Congress" and the indigenous "Anywaa Survival Organisation" which advocate the rights of the indigenous people of the Gambela Nation within Ethiopia and Sudan *(Ethiopia).*

Naomi Kipuri is a Maasai from the Kajiado district of Kenya. She is an anthropologist by training. Naomi Kipuri taught at the University of Nairobi and is now a development consultant. She does research and development and is interested in development concerns and issues relating to human rights and the rights of indigenous peoples *(Kenya).*

Benedict Ole Nangoro is a Maasai from Kiteto in Tanzania. He holds a M. Phil. in Development Studies from the Institute of Development Studies of the University of Sussex, UK. He is currently working with CORDS, a local NGO involved with indigenous pastoral Maasai communities on issues of land demarcation, mapping, registration and collective titling *(Tanzania).*

Central Africa

Dorothy Jackson is the Africa Programme Coordinator for the Forest Peoples Programme. ***Justin Kenrick*** is an anthropologist at the University of Edinburgh and Uganda project officer with the Forest Peoples Programme *(The Great Lakes Region and Cameroon).*

Southern Africa

Magdalena Brörmann is an educationalist who has served as a development worker in the fields of early childhood development, in-service teacher training and adult education in various African countries for over two decades. She is currently working as a mentor for young San trainees at the WIMSA regional office in Windhoek, Namibia *(Namibia).*

Robert K. Hitchcock is Professor of Anthropology and Geography and the Coordinator of African Studies at the University of Nebraska-Lincoln, Lincoln, Nebraska, USA. He is also the coordinator of the Human Rights and Human Diversity Initiative, a program funded by the UNL College of Arts and Sciences and the Ford Foundation. Hitchcock has spent much of the past two and a half decades working among the San of southern Africa, where he has concentrated on issues relating to development, human rights, and empowerment. Hitchcock is the author of *Kalahari Communities: Bushmen and the Politics of the Environment in Southern Africa* (Copenhagen: IWGIA, 1996) and is a co-editor of *Hunters and Gatherers in the Modern World: Conflict, Resistance, and Self-Determination* (New York: Berghahn Books, 2000) *(Botswana).*

Nigel Crawhall is an activist for indigenous peoples rights. He has worked with the Indigenous Peoples of Africa Co-ordinating Committee (IPACC), and is project manager on an indigenous knowledge and cultural resources management and training project with the South African San Institute (SASI) *(South Africa).*

ASIA

This section has been compiled, edited and partially written by Christian Erni, Asia Program Coordinator at IWGIA.

South Asia

Parshu Ram Tamang is a Senior Lecturer in Economics at Sarawati Multiple Campus, Tribhuvan University, Kathmandu, Nepal. He is a founding member, until recently General Secretary and currently advisor to the Nepal Federation of Nationalities (NEFEN). He is also the President of Nepal Tamang Ghedung (NTG) *(Nepal).*

C. R. Bijoy is a human rights activist. During the last sixteen years he has been involved and associated with indigenous issues and organisations in India and has written about these and related matters. ***Walter Fernandes*** has been working on tribal issues in India for two decades. He is the former director of the Indian Social Institute, New Delhi, and editor of Social Action. At present he is director of the North Eastern Social Research Centre. ***Samar Bosu Mullick*** is a political activist, teacher and researcher who has been working in solidarity with the indigenous peoples of Jharkhand for the last quarter of a century. He was one of the front line people in the Jharkhand movement for a separate state *(India).*

Wiveca Stegeborn is a Cultural Anthropologist (M.A. from Washington State University) attached to the University of Tromsoe, Norway, where she will submit her Ph.D dissertation. She has been conducting research among the Wanniyala-Aetto of Sri Lanka since 1977 *(Sri Lanka).*

East and Southeast Asia

Masaharu Konaka has worked for the Buraku Liberation League, Tokyo, as a secretary for several years. Since his return to Sapporo, he has been engaged in translation work for the activities of the Ainu people. ***Robert E. Gettings***, an Associate Professor of Hokusei Women's Junior College, kindly checked and corrected the English. He was born in Boston in 1952 and has a keen interest in indigenous movements *(Japan).*

Harald Bøckman, a sinologist, is Research Fellow at the International Institute of Peace Research in Oslo, Norway. His main field of research is the historical emergence of Chineseness and the relationship between China and her neighbours from an historical perspective (*China*).

The ***Association for Taiwan Indigenous People's Policies*** (*ATIPP*) is an NGO established and administered by Taiwanese indigenous activists. ATIPP is working for the empowerment of Taiwan's indigenous peoples and, as a research and advocacy group, ATIPP seeks to promote the rights of Taiwan's indigenous peoples through policy-making, bill-lobbying and other means *(Taiwan).*

AnthroWatch is a Manila-based research and advocacy group working closely with indigenous peoples in the Philippines. ***Joan Carling*** is Secretary General of the Cordillera Peoples Alliance (CPA) based in Baguio in the Cordilleras of Northern Luzon in the Philippines. ***Jimid Mansayagan*** is an Erumanen Ne Menuvu of Central Mindanao. He has been the Secretary General of Lumad Mindanaw (Peoples Federation) for eleven years and is currently involved in a village-based indigenous movement called Kebager te Ked-Inged. ***Michael P. Lacson*** is the national secretary of Bangsa Palawan (Indigenous Alliance for Equity and Well-Being). ***Dario Novellino*** is international advisor to the same organization. He is presently affiliated with the Department of Anthropology at the University of Kent in Canterbury (UK), as well as with the Institute of the Philippine Culture, Ateneo de Manila University *(Philippines).*

Torben Retbøll teaches history and Latin at Aarhus Katedralskole, a senior college in Aarhus, Denmark. He has written and edited several books on mass media and international affairs, including three IWGIA documents about East Timor, published in 1980, 1984 and 1998 *(East Timor).*

Danilo Geiger is a Social Anthropologist currently working at the Department of Social Anthropology of the University of Zurich, Switzerland. He was one of the founding members of the Swiss National Group of IWGIA and has lived and worked extensively with indigenous peoples in the Philippines and Indonesia. ***Emilianus Ola Kleden*** is the Information and Communication Manager of the Secretarial Office of the Indonesian national indigenous peoples' umbrella organisation, AMAN (Alyansi Masyarakat Adat Nusantara) *(Indonesia).*

Colin Nicolas is the coordinator for the Center for Orang Asli Concerns (COAC), Kuala Lumpur, Malaysia *(Malaysia).*

Wiwat Tamee, a Lisu, has assumed a growing role in advocacy relating to indigenous rights and issues in his native country, Thailand. He is currently the director of the Centre for Coordination of Non-Governmental Tribal Development Organizations in Chiang Mai, Thailand *(Thailand).*

Hanneke Meijers is a gender and natural resources consultant. She has worked in Asia, Africa and South East Asia. Since 1990 she has been living and working in Cambodia *(Cambodia).*

Luingam Luithui, a Tangkhul Naga, is a human rights advocate. For twenty-five years he has been actively involved in local and regional networking among indigenous peoples and alliance building with NGOs *(Nagalim).*

PART II

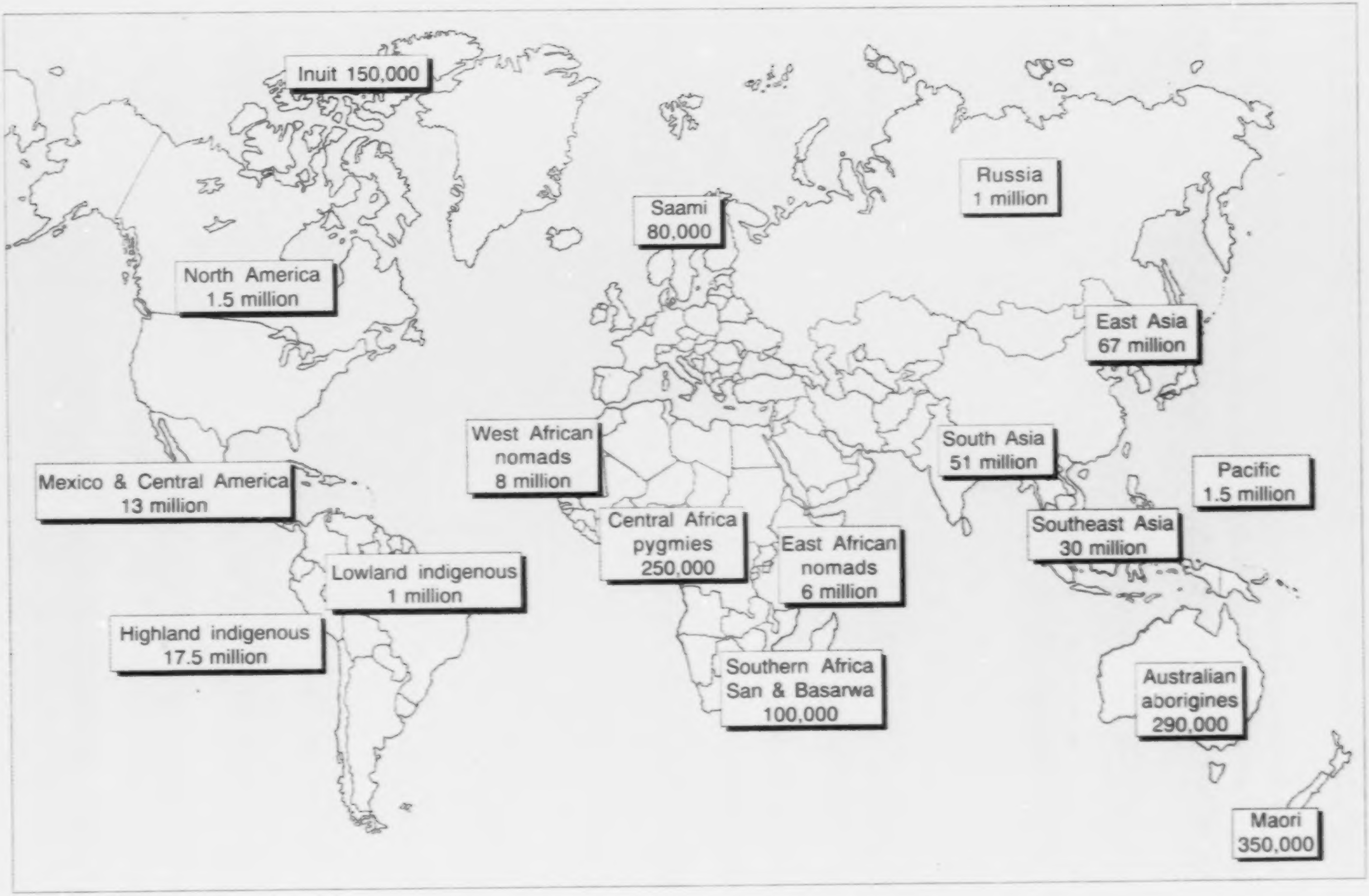
INDIGENOUS RIGHTS

This section has been compiled and edited by Lola García-Alix, IWGIA Human Rights Program Coordinator.

Dr. Sarah Pritchard is an Australian barrister and academic at the Faculty of Law, the University of New South Wales. She has worked with Aboriginal organisations in Australia and at the United Nations for a number of years. Sarah Pritchard has provided legal assistance via IWIGA concerning the Draft Declaration on Indigenous Peoples *(The United Nations: The 6th Session of the Commission on Human Rights Working Group on the Declaration on the Rights of Indigenous Peoples).*

Lola García-Alix is the Coordinator of Human Rights Activities at IWGIA *(The United Nations: The Permanent Forum on Indigenous Peoples).*

Dr. Carlyle Corbin is Minister of State for External Affairs for the U.S. Virgin Islands. He serves as the Secretary General of the Offshore Governor's Forum comprised of the elected governments of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands. He has participated in the proceedings of the United Nations' Special Committee on Decolonization since 1982 (*United Nations: Towards the Integration of Non-Independent Countries in the Unites Nations System*).


Inuit 150,000
North America 1.5 million
Mexico & Central America 13 million
Lowland indigenous 1 million
Highland indigenous 17.5 million
West African nomads 8 million
Saami 80,000
Central Africa pygmies 250,000
East African nomads 6 million
Southern Africa San & Basarwa 100,000
Russia 1 million
South Asia 51 million
East Asia 67 million
Southeast Asia 30 million
Pacific 1.5 million
Australian aborigines 290,000
Maori 350,000

BEST COPY AVAILABLE

PART I

THE INDIGENOUS WORLD BY REGIONS & COUNTRIES

THE ARCTIC

BEST COPY AVAILABLE

THE ARCTIC

THE ARCTIC COUNCIL

The second Arctic Council Ministerial meeting was held in Barrow, Alaska in October last year. The towns of Barrow and North Slope Borough - known for their great hospitality - were hosting the meeting, which took place in the middle of the bowhead hunt and thus provided the best of food and excitement for the international gathering.

The Arctic Council welcomed two new members as Permanent Participants, namely Gwich'in Council International and Arctic Athabaskan Council. The two organizations represent Gwich'in and Athabaskan-speaking peoples from both Canada and Alaska.

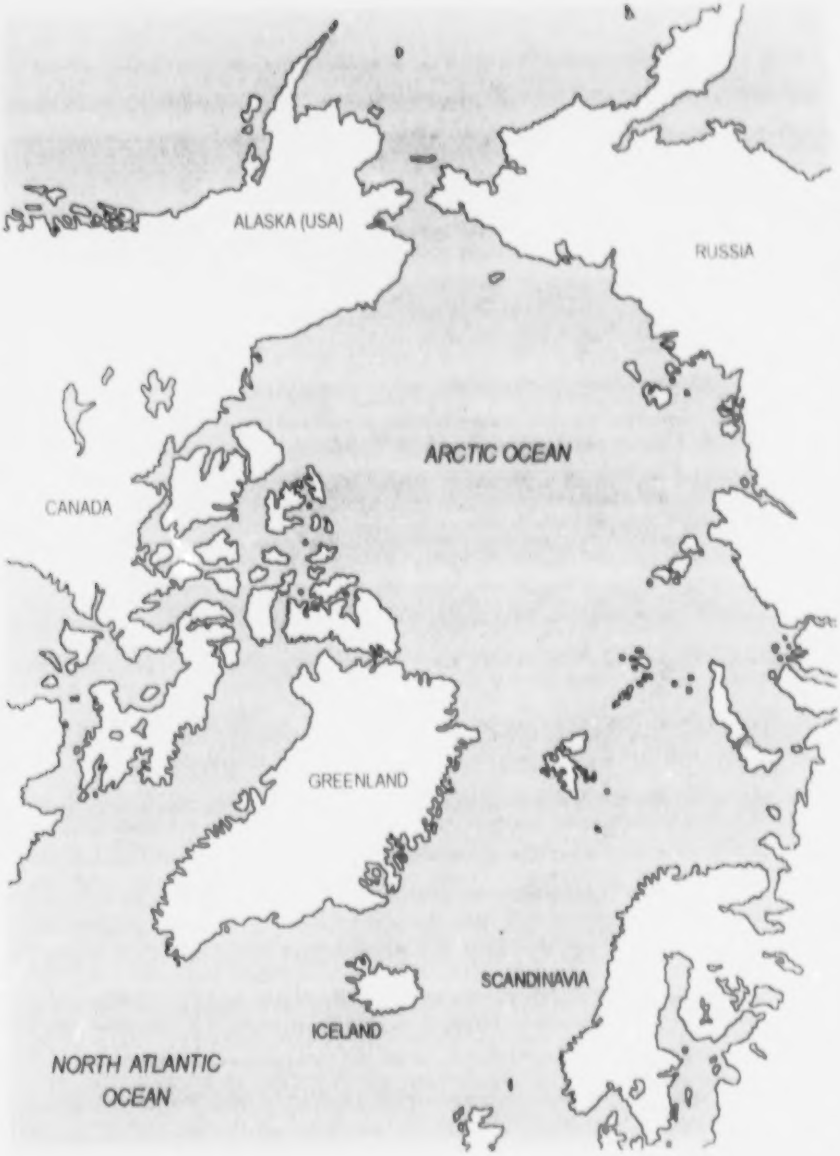
The Premier of Greenland, Jonathan Motzfeldt, who was heading the joint Danish, Faroese and Greenland Delegation for the Kingdom of Denmark, made it clear in his opening speech that it is important that the Arctic Council should develop into a forum that is accessible and of interest to the peoples actually living in the Arctic. The Premier noted with satisfaction that the Greenland initiative to conduct a circumpolar survey of the living conditions of the peoples of the Arctic was adopted by the Council.

Another major achievement during the Ministerial meeting was the adoption of a strategy for sustainable development in the form of a so-called framework document, which establishes some important guiding principles for the future work of the Council and the Sustainable Development Working Group (SDWG).

The Arctic Council Action Plan (ACAP) was endorsed by the Arctic Council as an umbrella strategy to reduce and eliminate pollution of the Arctic environment. Finally, it was decided to go ahead with the Arctic Climate Impact Assessment (ACIA), which is intended to become a comprehensive study of the environmental, health, social and economic impact of climate change in the Arctic.

The Arctic Council Ministerial meeting concluded with the signing of the Barrow Declaration - the workplan for the next two years under a Finnish Chairmanship. The Finnish Chairmanship this year features the 10-year Anniversary of the Rovaneimi Declaration of the so-called Finnish Initiative declaring the development and implementation of an Arctic Environmental Protection Strategy (AEPS). The AEPS, which is now incorporated into the Arctic Council, has proven to be a very successful environmental strategy.

BEST COPY AVAILABLE


ALASKA (USA)
RUSSIA
ARCTIC OCEAN
CANADA
GREENLAND
SCANDINAVIA
ICELAND
NORTH ATLANTIC OCEAN

THE ARCTIC

BEST COPY AVAILABLE

GREENLAND

The National Missile Defense

In the foreign policy area, a great deal of the discussion throughout the year was centred on a deity – everybody talks about it but nobody has seen it: the National Missile Defense (NMD) with which the USA wants to shield itself against missile attacks from rogue states such as North Korea and Iraq. The remaining American military base in Greenland, Thule Air Base, has been included in the plans, and is to be used as a tracking station for incoming missiles. Both the Danish and the Greenlandic governments have refused to take a stand on the issue, claiming they have not yet received an official enquiry from the United States. The establishment in the USA seems to be all for going ahead with the plans, especially the new administration, but all the tests that have been conducted so far have failed. The plans to develop a NMD have received criticism from the European allies, but Denmark has remained uncommitted. Nevertheless, if one were to analyse the Danish government's silence, it seems more like a silent acceptance, for historically Denmark has always wanted to please "Big Brother", as the different cases of forced relocation of the local population in 1953, deployment of nuclear arsenals in Greenland against the official policy of a non-nuclear Danish Kingdom and environmental pollution from abandoned American bases show, at the expense of Greenlandic interests. The official Greenlandic government's opinion has been that the NMD should not jeopardise nuclear proliferation, and that the USA should come to terms with Russia regarding compatibility of the 1972 ABM Treaty. The last, and also most important, demand is that Greenland should sit at the table when the issue is discussed with the USA.

The issue has the potential of creating a split between the Greenland coalition government of Siumut and Inuit Ataqatigiit. The party of Social Democratic observance, Siumut, has been more cautious about stating a clear opinion, citing the above-mentioned conditions, while the Socialist Inuit Ataqatigiit has loudly rejected the idea of creating the NMD and far less involving the Thule Air Base in it. But besides being a politically hot issue, it has far more fundamental importance for the increasing need to develop a foreign policy capacity, as Greenland has demanded to be included in the decision-making process, instead of Denmark alone taking action on behalf of Greenland. In the sphere of security-policy in particular, Denmark has in the past been quite reluctant to share its decision-making with

Greenland, not least since Denmark has benefited from the American presence in Greenland in relation to NATO over the years. But, as the autonomy of Greenland is evolving in the foreign policy area, Denmark can no longer ignore the opinion of the Greenlanders and it will create a political crisis between the two countries if Denmark goes against the opinion of Greenland on this issue. The Danish feelings of guilt at hiding information from the Greenlanders about the deployment of nuclear missiles throughout the 1950s and 1960s, together with the forced relocation of the local population in 1953 when the base was being expanded, as well as the crash of a B-52 bomber in 1968 with four hydrogen bombs and the environmental consequences, are all too historically vivid for the Danes to deny the Greenlandic people a say in this matter – whatever the outcome might be.

The Integration of Danes into Society

The language debate continued to create controversy, coupled with the issue of the integration into society of Danes living in Greenland. The vocal critics claim that the Danish language is too dominant in the sphere of public administration after 22 years of Home Rule and that Danish-speaking persons are promoted at the expense of qualified Greenlanders. The fact that many of the academic positions in public administration are filled by Danes, as there is a shortage of Greenlandic-speaking people with university degrees shows, according to the critics, that the government policy in the field of education has failed. Others say that it is an expression of continued colonialism. The critics go on to say that it should be a requirement, if one is to fulfil a position in Greenlandic society, to be able to speak Greenlandic. Many of the Danes who come to Greenland to work stay only 2 or 3 years and have no chance to learn the language since there is no policy or established programme to integrate them into society and offer them intensive language lessons. However, it is also often stressed that the educational system should be blamed for not giving the Greenlanders the necessary skills in foreign languages to be able to acquire a higher education. The issue can thus be characterised as a frustration that, after 22 years of being in charge of planning and executing policies, Greenland has not been able to educate as many people as it would like to fulfil those positions that require a lengthy and strenuous university degree in all the different fields. Greenland has invested heavily in education and has given its young people beneficial opportunities to obtaining an education. There were great hopes of overturning the historical dominance of the Danes in management positions when Greenland attained home rule in 1979. But, although there has been an increased number of Greenlanders in management positions and among academics, the fact that Greenland has gone from a traditional hunting society to a modern industrial society shows that it takes a long time to create a well-educated populace in which there has been no tradition of acquiring an academic education. On top of this, a recent study among university students taking their degrees in Denmark showed that they were more likely than not to be from a mixed family in which one parent is Danish and the other Greenlandic.

The study mentioned also showed that students who lack Greenlandic language skills are often prejudiced against and feel inferior to the rest of society in Greenland, as they cannot speak their mother tongue so well. This might in part explain why a large number of Greenlanders with a higher education remain in Denmark upon finishing their studies. Thus, even though only a few Greenlanders have been educated as engineers, and in spite of the many opportunities at home, most of them settle in Denmark.

Although the two groups function well together in general, the language issue is often used for political purposes. However, whatever viewpoints exist, it seems to be generally agreed that significant investments have to be made in the educational system, first of all in the area of primary education but also as regards the education of Greenlandic teachers. Many teachers in Greenland speak only Danish but the real challenge to the Home Rule authorities is the education of Greenlandic teachers.

The Greenland Self-government Commission

In late 1999, the Greenland Premier, Jonathan Motzfeldt, presented a Self-government Commission to look into Greenland's future position as part of the Danish realm (see *The Indigenous World 1999-2000*). The members of the Commission are all prominent Greenlandic politicians. Working Groups have been established by the Commission and, in early 2001, a conference was called in Nuuk to discuss security and defence issues.

All political parties in Greenland have increased the emphasis on self-governance as an issue on the political agenda. More than 20 years of Home Rule has revealed a need to reconsider the existing division of responsibilities between Denmark and Greenland, including foreign relations. While some politicians talk of revising the current arrangement, others are in favour of a completely new agreement based on an equal partnership. Independence is not included in the Self-government Commission's terms of reference, but the vision for the future - shared by most Greenlanders - seems to be a Greenland in control of its own economy and being able to deal with other nations at its own discretion.

No Oil in the First Drilling

The year 2000 also saw the results of the long-awaited oil-drilling 150 km west of Nuuk in Fyllas Banke. The Norwegian oil company, Norsk Hydro, together with other international oil companies, obtained the concession to drill for oil in the geologically interesting field west of Nuuk. There were high expectations among Greenlanders that finding oil would be a way of forging a path towards greater economic independence from Denmark. The block grant from Denmark accounts for 54.5 per cent of Home Rule revenue and 38.7 per cent of total public revenue. But the first exploration did not result in any oil flowing from under Greenland. However, statistics show that the probability of finding oil on the first drilling is extremely low and another consolation is that in an oil-producing country such as Norway, it took 13 drillings before they found oil. There was naturally disappointment in Greenland as the outlook for other trial drillings may be negatively affected. The decision to drill in other areas has not yet been taken.

The prospect of finding oil in massive quantities also brought up the issue of the economic and social consequences it will have on society as a whole. Calculations and studies have been undertaken in this regard, which show that the workforce in Greenland will have to be educated in a new field if it is to be actively involved in the oil adventure. The influx of foreign workers may disrupt the social fabric of the small Greenlandic communities; new service sectors and heavy investment in infrastructure in order to support the oil industry will also create a strain on the public sector budget. Not least, the demand for housing in a town like Nuuk - which already has a considerable shortage of housing - will require the import of workers and heavy investments that may lead to a spiralling economy, since the relatively small markets in Greenland will be hard pushed to absorb the large amounts of money that will rapidly flow in to meet the demands of the oil industry.

SÁPMI - SWEDEN

ILO Convention No. 169

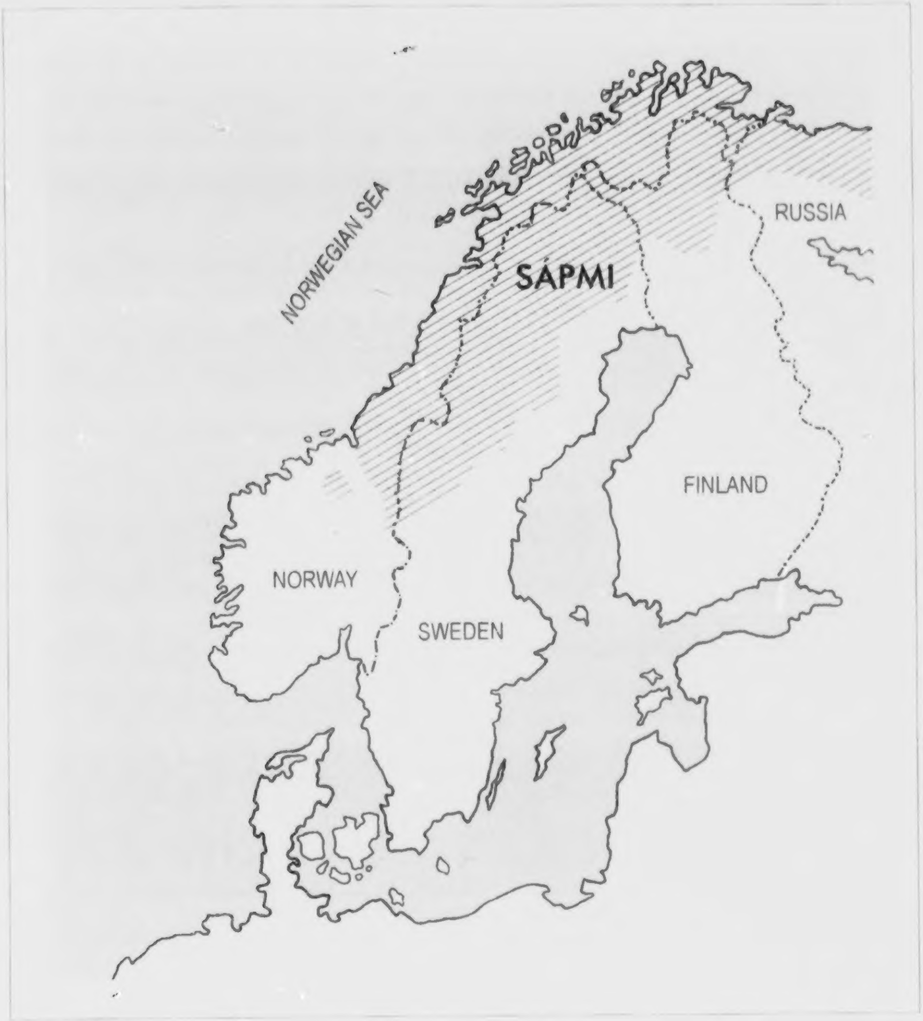
Sweden has not yet ratified ILO Convention No. 169 on Indigenous and Tribal People ("ILO Convention No. 169")[1]. In 1999, an investigator appointed by the government to evaluate whether Sweden should ratify ILO Convention No. 169 (the "ILO Investigation")[2], recommended that Sweden should do so. The recommendation was reiterated in August 2000 by the UN Committee on the Elimination of Racial Discrimination (CERD), in its then submitted Concluding Observations on Sweden (the "Concluding Observations 2000")[3]. The government responded by launching another investigation. The results of this investigation were initially supposed to be presented in a writ before the Swedish parliament during autumn 2000. The date has been moved forward a couple of times. According to the latest information from the government, the writ will be presented to parliament sometime during autumn 2001.

Land Rights - Generally

Sweden's main obstacle to ratification of ILO Convention No. 169 is Article 14, which states that indigenous peoples' ownership and possession of the lands that they traditionally occupy shall be recognised. As the government hesitated ratifying ILO Convention No. 169, the Saami people's land rights were further eroded during the year 2000.

When regulating or otherwise dealing with the Saami people's right to land, Swedish authorities have always presupposed that the Saami people have no legal right to the land that they traditionally occupy.

Disregarding the uncertainty over ownership, the Swedish public power plant company *Vattenfall* has applied to be registered as the owner of three separate land-areas within the traditional Saami territory. In all three cases, the *Sameby*[4] concerned has challenged the application, arguing that Vattenfall cannot be registered as owner since it has not been sufficiently demonstrated that the land belonged to the state in the first place. Indeed, the Samebys regard themselves as owners of the land under dispute. In the first of the three cases, the court of the first instance decided in favour of the Sameby, stating that it was not sufficiently clear that Vattenfall, claiming to derive its right from the state, actually owned the land. The court of appeal reversed this in a decision of June 22, 2000. The case is currently pending in the Supreme Court. Should the Supreme Court agree with the court of appeal, the Sameby will



need to initiate full-scale court proceedings over the ownership of the land in question. If not, Vattenfall will be registered as owner of a part of the area that the Sameby traditionally occupies.

In addition, privatisation of previously publicly held forest and hydroelectric companies further eroded the Saami people's land rights during the year 2000. The transfer of land held by such entities into the private sector, without clarification of the legal status of the land, has resulted in the forest and hydroelectric companies expanding their businesses further into the Saami's summer and winter grazing areas.

As the ILO Investigation pointed out, there is no doubt that Sweden's attitude with regard to the Saami People's land rights is not compatible with ILO Convention No. 169. In its Concluding

BEST COPY AVAILABLE

Observations 2000, CERD too expressed concern over the Saami people's land rights, particularly highlighting the threats associated with the privatisation of land in the Saami territories. CERD recommended Sweden to enact legislation recognising the Saami people's land rights. Demonstrating considerable insight, CERD connected the Saami people's right to land with the Saami people's possibilities for pursuing their traditional way of life.

Land and Cultural Rights – Winter Grazing Areas

Reindeer husbandry is one of the main traditional livelihoods of the Saami people. Most Saami would agree that a living reindeer husbandry industry is paramount for the preservation of the Saami culture. Even if not recognised as owners of their traditional land, the Saami are - under Swedish legislation - allowed to carry out reindeer husbandry in areas that they have used "from time immemorial".[5] The legislation does not define, however, which, in the government's opinion, these areas are. The uncertainty has resulted in conflicts, particularly in the winter grazing areas, which the Saami nowadays to a large extent share with the non-Saami population. There are currently seven cases pending in the Swedish courts, where non-Saami claim compensation from different Samebys because of the reindeers grazing on land to which the non-Saami hold title but which, also, according to the Sameby, form part of their traditional winter grazing areas. Both sides have asked the government to intervene and assist in formulating a solution acceptable to both parties. In autumn 2000, in response to CERD's criticism in the Concluding Observations 2000, the minister of agriculture promised to appoint a commission with the task of investigating what areas the Saami people have used from time immemorial. Since the commission is to be financed from within the existing budget, however, it has not yet been constituted, due to lack of funding. Meanwhile, during the year 2000, a couple of the Samebys sued have announced that they can no longer afford to carry on the law-suits. Some other Samebys are negotiating with the landowners, trying to reach a settlement. If no settlement is reached, the court of appeal is expected to rule on the first of these cases within the next couple of months.

Having to pay compensation for using their winter grazing areas would be the end for many reindeer husbandry businesses. To add to the pressure on reindeer herders, there are predatory animals.

Cultural Rights – Predatory Animals

The four big predatory animals[6], together with the golden eagle, constitute perhaps the most severe threat to many reindeer herders. The number of predatory animals in some parts of the reindeer areas has increased dramatically in the last couple of years. There are reindeer herders who, in one year, have lost as many as 90 percent of their reindeer calves to predators. The Saami community has repeatedly pointed out that it is not feasible for about 1,000 reindeer husbandry businesses to carry the costs associated with preserving Sweden's predatory animals. The Saami argue that there must be a cap on how many killed reindeer each Sameby should have to sustain. Further, adequate compensation must be paid for each reindeer killed.

On December 21, 2000, the government submitted a bill to parliament, proposing a new policy with regard to predatory animals[7]. The bill does not contain any limitation on the number of killed reindeers each Sameby should have to sustain, and does not propose full compensation for the reindeers slain. The substantial financial loss caused by predatory animals results in many young Saami currently hesitating to become reindeer herders.

Land Rights - Hunting and Fishing Rights

In the Concluding Observations 2000, CERD particularly stressed its concern over the Saami people's hunting and fishing rights.

Responding to the criticism, the government has submitted the issue of the Saami people's hunting and fishing rights to a commission whose task is to undertake an overall review of topics relating to the Saami people in Sweden[8]. The commission has just announced, however, that it believes that the hunting and fishing rights are better investigated separately by a commission constituted for that particular task. This implies that there will be another couple of years before a proper evaluation is made of perhaps the most criticised regulation ever in Sweden relating to the Saami people.

Cultural Rights - the Saami Language Act

On April 1, 2000, new legislation allowing Saami to use the Saami language in legal and administrative proceedings came into force[9]. Commending the government for this particular legislation, in the

Concluding Observations 2000 CERD urged Sweden to broaden the scope of the act to cover the entire traditional Saami territory.

Notes

[1] Finland and Russia have not ratified ILO Convention No. 169 either, while both Denmark and Norway have.

[2] SOU 1999:25 – *Samerna ett ursprungsfolk i Sverige*

[3] CERD/C57/CRP.3/Add. 2

[4] A collective and well-defined social entity of individual Saami, accepted as a legal entity.

[5] In Swedish *"urminnes hävd"*.

[6] The predatory animals are: Wolf, wolverine, lynx and brown bear

[7] Prop. 2000/01:57 *om en sammanhållen rovdjurspolitik*

[8] *Rennäringspolitiska kommitten*

[9] Lag (1999:1175) *om rätt att använda saamiska hos förvaltningsmyndigheter och domstolar.*

SÁPMI - RUSSIA

In Russia there exist two main Saami organizations: the Kola Saami Organization (AKS) and the Saami Public Organization of the Murmansk Region (OOSMO). The Nordic Saami Conference (held in September 2000 in Kiruna) adopted OOSMO as a new member of the Saami Council and OOSMO now has one seat on the Council. A seminar on land use in the Kola Peninsula was arranged with participants from the Scandinavian Saami. The seminar demanded that the federal level law "On the guarantee of the rights of the indigenous peoples" should be respected.

The cooperation between Lovozero and Karasjok, Norway, celebrated its 10 year anniversary. The Norwegian Saami have done a great deal to help the Lovozero region and particularly the Saami. The Norwegian religious organization has a permanent office in Lovozero with one person working primarily on humanitarian assistance programmes. Some Saami tried to visit their former home villages (Varzino), which they had been forced to leave in the 1960s but were forbidden to enter the area as it is now used by the military.

The Murmansk authorities gave 100,000 roubles for the publication of Saami textbooks. Nevertheless, the Saami language radio transmis-

The Northern Games, Russia. Sami preparing for the reindeer race. Photo: Leif Rantala

Chao Ke, Svein R. Nystö and Nina Afanasjeva, Utsjoki, Finland. Photo: Leif Rantala

BEST COPY AVAILABLE

sions were closed down due to lack of money. The freedom of the press is under more threat now than it was during the last years of the Soviet era. This is of concern to the local people, especially in Lovozero, the Saami capital of Russia. The authorities use economic methods to prevent the newspaper, Lovozerskaya Pravda, from printing critical articles on any topic, including the situation of the Saami people.

The situation in reindeer herding management is now a little better than before. The reindeer company's director has hired the OMON (special police) to fight against poachers. These measures to save the reindeer herds have been taken on the basis of a decree by the governor of October 12th 1998. Nevertheless, about 6,000 reindeer (out of 100,000) are being killed every year by poachers.

SÁPMI - FINLAND

Following the elections in the autumn of 1999, the new Saami Parliament began its work on the 1st January 2000. Pekka Aikio was re-elected as president of the Saami Parliament. At the opening ceremony in April, the president of Finland, Mrs. Tarja Halonen, made a speech stressing the importance of finding a solution to the land rights question in Saami areas and stating that she hoped the Saami would develop their cultural autonomy in co-operation with the Finnish decision-making bodies and authorities.

The quarrel over the definition of Saami continued throughout the year. During the year 2000, the relation between the Finns and the Saami continued to deteriorate. This development started some 6-7 years ago, when a group of Finns claimed that they, in fact, were Saami. When they did not succeed in making their claims heard and could not gain the right to vote in the Saami Parliament elections, they founded a clever movement declaring that the Saami and the Lapps (the old name for the Saami) were two different groups. The movement gained powerful support from some deputies of the Finnish Parliament and some Finnish journalists. This disinformation campaign has been very harmful to the Saami population in Finland. In 1999, there were some 650 persons whose applications to vote in the elections were denied by the supreme court. These people were Finns who declared themselves to be Saami.

Land Rights

A one-man committee comprised of judge Pekka Vihervuori had the task of researching what laws Finland should amend in order to be able to ratify ILO Convention 169. The issues in question are the Saami's right to land, water, national resources and traditional livelihood. Vihervuori suggested the establishment of a land rights council and a land rights fund to deal with practical issues on land rights and funding decisions. The Finnish state should pay 15 million Finnmarks per year into the fund. There were 77 bodies and organizations that responded to Mr. Vihervuori's suggestions.

After the report of Vihervuori's committee, a new committee was appointed, led by the governor of Lapland, Mrs. Pokka. It will continue to work on the same problem of land rights that Vihervuori had started to discuss. Half the members of this committee have been appointed by the Saami Parliament, the other half by various state and municipal bodies. Its work should be finished by November 2001.

The third committee is again a one-man committee comprised of judge Juhani Wirilander. His task is to investigate who should be considered land owners in the Saami area of Finland. His work should be finished by April 2001.

The fourth committee is a committee appointed by the Finnish Saami Parliament itself. It is also investigating issues of land ownership. Its work should be completed by July 2001.

In 2000, the researcher Kaisa Korpijaakko-Labba published a large investigation into what happened to the Saami land rights dating from before 1750. The study covers the period from 1750 up to 1917. In short, the results show that the forestry industry continuously rode roughshod over Saami land rights.

The New Finnish Constitution

Finland gained a new constitution on March 1 2000. Under the chapter "The right to one's language and culture (§ 17)" it states, "the Saami as indigenous people and the Romans and other minority groups have the right to maintain and develop their language and culture. The right of the Saami to use the Saami language in contacts with the authorities, is regulated by a special law." The constitution and a short explanation were also published in the Saami language.

THE INDIGENOUS PEOPLES OF RUSSIA

Changes in the National Legislation

In March, 2000, in accordance with Article 1 of the Federal Law *'On Guarantees of Rights of Indigenous Small Peoples of the Russian Federation''* (1999), a governmental enactment was adopted to extend *'The Unified List of Indigenous Small Peoples of the Russian Federation'* from 32 to 45 names, thereby including 11 new, officially recognized 'indigenous small peoples of the North' and 3 small peoples of the Caucasus (due to the fact that the authorities of the Republic of Dagestan were opposed to adding the Dagestani indigenous small peoples to the new List, whereas ethnographers estimated their number to be about 15).

The enactment was not supported by legislation that stated how to accomplish the rights of those peoples, which were included in the above List for the first time since their expulsion in 1926. During the years of Soviet power, the majority of these peoples' representatives had lost documentary proof confirming their membership of a specific people, since the column 'Nationality' in the passport could only be filled with the names of nationalities included in the official List of the USSR Peoples. The mechanism to restore within documents one's membership of one of the peoples newly included on the List is still unpublished. The body responsible for the elaboration of this mechanism is the Ministry for the Affairs of the Federation, National and Migration Policy.

The Federal Law *'On General Principles to Organize Communities of Indigenous Small Peoples of the North, Siberia and the Far East of the Russian Federation'* was passed on July 20, 2000 applying to peoples of the North, Siberia and the Far East only. The Law triggered contradictory responses from the Association of Indigenous Small Peoples (RAIPON).

The bottom line is that the said Federal Law, on the one hand, curtails the 'commercial' entrepreneurial activities of communities and, on the other, identifies in a very indistinct way the functions of communities as self-governmental agencies. At the same time, during the period of formulating this Federal legislation, which started in 1992, regional laws on community rights have been passed in approximately one third of the total number of 30 Northern regions. In some regions, Associations of Indigenous Peoples have succeeded in gaining more community rights than those guaranteed by the Federal Law. The Constitution of the Russian Federation stipulates streamlining of regional legislation in accordance with Federal. This could endanger indigenous peoples in regions with more democratic legislation on indigenous peoples' rights, losing some of the recently acquired rights as a result of such streamlining procedures. However, these regions are few, mainly the Khabarovsk Kray and the Koryak Autonomous Okrug. At the same time, there are over two dozen regions where the authorities never bothered to pass any regional legislation on indigenous peoples' rights before the Federal Laws came into effect; they only reflected the existence of indigenous peoples and their rights in high-sounding statements in the regional 'Charters' or in the temporary status of the indigenous peoples of their regions.

Since 1992, the State Duma has been in the process of elaborating a Federal Law on 'Territories of Traditional Nature Use'. It was adopted 'during the first reading' in 1998 and its new version is now being prepared for consideration. Its adoption may lead to similar consequences, entailing a split in the unity of the indigenous peoples' movement. To avoid this, the Russian Association of Indigenous Peoples of the North and IWGIA national group members are constantly monitoring the efforts to draw up the Law, making suggestions via their Deputies, publishing corresponding materials in their Journal, and trying to provide legal support to regional organizations of indigenous peoples in terms of protecting their rights.

The Government and Indigenous Peoples: Changes in the Structure of Executive Power

In May 2000, the State Committee for the North, which used to accumulate and channel budget funds into the regions, to be shared between programs of support for indigenous peoples of the North, Siberia and the Far East, was disbanded by Presidential ordinance. Despite the fact that its efforts were basically ineffective and that, over the last decade, two five-year state programs concerning the economic and social development of indigenous small peoples of the North failed to be fulfilled, this agency did, however, have a department available to which representatives of indigenous peoples of the North could appeal to. The most persistent among them had a chance of securing at least partial support for their regional projects. Now, the functions and budget funds of the State Committee for the North have been redirected to two reorganized Ministries: the Ministry of Economics of the Russian Federation and the Ministry for the Affairs of the Federation, National and Migration Policy. To date, both Ministries have been unable to form special structures for their dealings with the indigenous small peoples of the North. The problems facing indigenous small peoples are engulfed in the vastness of these Ministries' subject matters. Suffice to say that the Ministry for the Affairs of the Federation, National and Migration Policy is under constant criticism for its failure to cope with the migration activities in Chechnya, while the Ministry of Economics is criticized for its impotence in stopping the economic and fuel crisis in the Far East. The meeting of representatives of authorities held in Moscow on 27-28 November 2000 to probe into the problems of indigenous peoples of the North emphasized that the situation of the indigenous peoples was a matter of grave concern. It is worth noting that Governmental speakers interspersed their reports with data from the preceding year and even older demographic and social indicators of living standards.

Living Conditions of the Indigenous Peoples of Russia

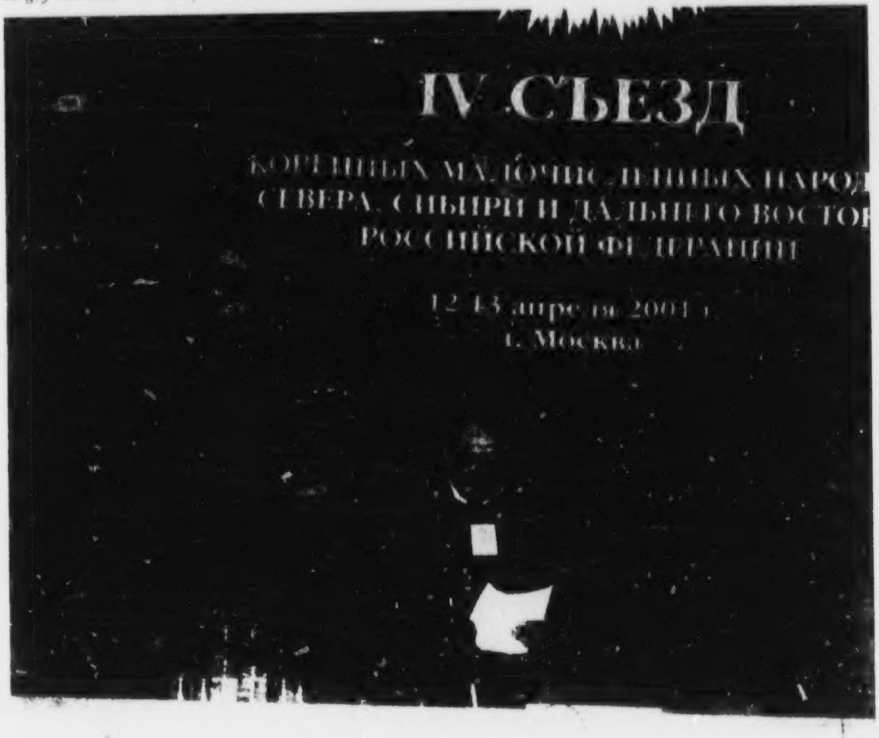
According to RAIPON Vice-President, Dr. Larisa Abryutina, the main reason for the crisis in the situation of the indigenous peoples is the overwhelming state heritage of a policy of paternalism from the past, as well as the removal of children from their families to be educated in boarding schools, transforming the indigenous people into helpless personalities. These circumstances resulted in deficit in physical and emotional activities, which became the prerequisite for the deterioration in their health. The increase in cases of tuberculosis is statistically proven. Mortality due to this disease is as high as 40 cases per 100 persons in Khanty-Mansiisky autonomous region; in the Yamal-Nenets region this increases to 87 (in Russia the average is 10). The high rates of suicide in the North is mainly related to the alcohol addiction of some indigenous people. The mortality of indigenous peoples through suicide in the Chukotka comprised an average of 83.8 per 100,000 (in Russia this average is 30 per 100,000).

The average life expectancy of indigenous people of the North is 10-15 years less then that of the rest of Russia. In some regions, it is as low as 41-42 years among men. In most areas of Russia, the increase in the population is negative and falling. For example, the Itelmen in Kamchatka on average have had a negative population increase – minus 2.1 per thousand - for the last decade. According to data from the Institute of the Indigenous Peoples of the North (the Siberian Branch of the Russian Science Academy), in 1998 the Saami, Nganasan, Negidal, Aleut, Enets, Eskimo, Kumandins and Shor peoples' mortality rate was higher than their birth rate.

In comparison with 1990, the birth rate among the indigenous peoples of the North had decreased by 34%, while the mortality rate

A Nenets and a Saami participant at the IV Congress, Russia, April 2001. Photo: Kathrin Wessendorf

Sergey Haruchi, a Nenets from Siberia, re-elected president of RAIPON. Photo: Kathrin Wessendorf


IV СЪЕЗД
КОРЕННЫХ МАЛОЧИСЛЕННЫХ НАРОД
СЕВЕРА, СИБИРИ И ДАЛЬНЕГО ВОСТОК
РОССИЙСКОЙ ФЕДЕРАЦИИ
12-13 апреля 2001 г.
г. Москва

had increased by 42%. The natural increase in the population of the indigenous peoples of the North had diminished 3-fold over that period.

Over the same period, the number of people in employment among the indigenous peoples of the North decreased in agriculture by 45%, in industry by 43%, in construction by 68%, and in commerce, communication and transport by 32%. The activity of these peoples continues to decrease in the traditional economies, and the level of unemployment in a number of indigenous settlements exceeds 60%. For example, in the Koryak autonomous region, in the small villages where Koryak people predominantly live, unemployment exceeds 85%. This fact, along with the critical state of the health and reproduction of indigenous peoples, is connected with the general social and economic crisis in the country and the degradation of the natural environment, provoked by the uncontrolled exploitation of natural resources.

Violations and Threats of Violations of the Rights of Indigenous Peoples

In the field of environmental protection, an increase in oil production in the subsistence areas of indigenous peoples, frequently without their consent or any ecological examination and without compensatory payment for damage, can be observed. The Sakhalin off-shore areas, the North of Western Siberia and the shelves of Taz and Ob Bays are particularly threatened by these economic ventures. The mining of minerals, on the other hand, affects the areas of Yakutia, Evenkia, Kamchatka, and Chukotka. Extensive felling of timber by timber companies can be detected in Karelia, Primorskiy and Khabarovsk Territories. And, in many regions, general environmental pollution is occurring caused by industrial and radioactive waste.

In the area of the right to land, education and healthcare, a campaign has commenced in some regions to take back land given to indigenous peoples as far back as 1992. The number of schools and teachers in the areas populated by indigenous people has been on the decrease ever since 1995, along with a shortage of textbooks, especially those needed to teach the native language. The reduction in the number of village hospitals and qualified medical staff, in accordance with the so-called plan for 'enlargement of village hospitals', which in actual fact means a reduction in their number (the Government is pursuing a policy of consolidating medical institutions into larger units), has been a fact of life since 1995 in the areas populated by indigenous peoples. A lack of food products is also constantly felt.

Conclusion

At the dawn of a new century, the socio-economic and legal position of indigenous peoples remains extremely complicated. The situation of the local groups residing in territories of traditional settlement and depending on traditional use of nature is considered - even by representatives of the authorities – to be disastrous. At the same time, there is no specialized department in Russia dealing with the problems of the indigenous peoples, there is no state agency responsible for this desperate situation. The task of improving the socio-economic position of indigenous peoples is not considered to be of overriding importance to the authorities. The problem facing indigenous peoples of not being able to exercise their right to land are not being solved since they are closely related to a solution of the general state problem concerning land and natural resource rights. Under such conditions, activities related to human rights concerns and information-oriented and practical efforts on the part of indigenous peoples' public organizations have developed at a pace. The recent increase in the RAIPON's activity, embracing 34 regional and ethnic organizations of indigenous peoples in Russia, has been most impressive. The expansion of its activities, the consolidation of its information interface with the regional communities, the publication of its own journal, an active position in relation to the state and regional authorities, its participation in international fora of indigenous peoples and higher international repute have all been gained through the multifarious activities organized by the current leadership of RAIPON elected in 1997, and re-elected in 2001, and through the support of RAIPON projects on the part of international organizations.

NUNAVUT

The year 2000 was not just the beginning of a new millennium but also the beginning of a great deal of hard work on the part of the new self-government in Nunavut, trying to improve conditions for Inuit-owned companies, and preparing and training government staff for decentralization of various government boards and departments, which are supposed to move to some of the major communities of Nunavut in order to create local jobs and development.

However, one of the most important debates in Nunavut in 2000 was the creation of a new indigenous policy based on Inuit Qaujimajatuqangit, in daily use referred to as IQ, which means "that which is long known by Inuit" in the local language Inuktitut. In English IQ is referred to as Inuit traditional knowledge. Inuit Qaujimajatuqangit is defined as Inuit values, world-views, language, social organization, knowledge, life skills, perceptions, etc., which have been passed on orally from one generation to another.

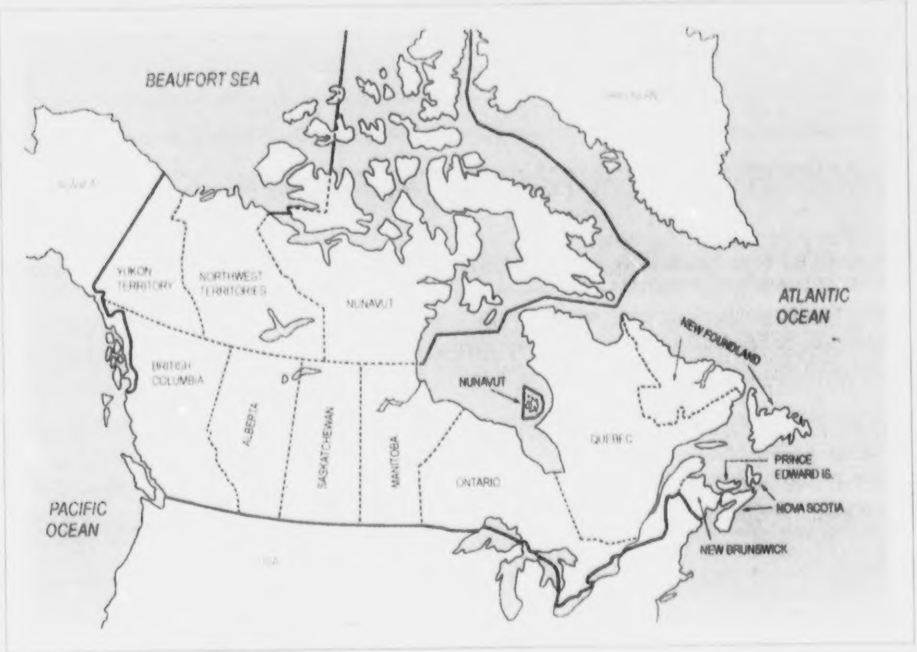
Guiding Principles for the Government of Nunavut

It is the vision of the Government of Nunavut that IQ should be integrated into all government policy and programs. Several hearings and workshops have been set up in Nunavut during the last 2-3 years to try to formulate IQ into a workable framework for Nunavut politicians. Drawing on elders' knowledge, experiences and expertise, which have traditionally guided and governed Inuit society, in 1999 the Nunavut Department of Sustainable Development defined six guiding principles for the Government of Nunavut's policy and program developments, based on the traditional society's model: 1)Pijitsirniq: the concept of serving, which lays out the relationships between the government and the people it serves, 2)Aajiiqatigiingniq: arriving at a decision through discussion/consensus decision-making, 3) Pilimmaksarniq: skills and knowledge acquisition through observation, and experience, 4) Piliriqatigiingniq: working together for a common purpose, 5)Avatimik Kammattiarniq: environmental stewardship, 6) Qanuqtuurunnarniq: being resourceful to solve problems by showing respect, tolerance towards each other and the environment.

The difficult part, of course, is to integrate these principles into a modern government structure. However, Nunavut Government's Inuit Qaujimajatuqangit Report, which was released in August 2000, has some very concrete recommendations.

Concrete Recommendations

The overall importance of implementing IQ is to apply Inuktitut as the working language of the government. Without the Inuktitut language, the Inuit traditional knowledge cannot thrive. The report states that the government should develop mandatory language lessons for non-Inuit staff, and that the government should


BEAUFORT SEA
YUKON TERRITORY
NORTHWEST TERRITORIES
NUNAVUT
BRITISH COLUMBIA
ALBERTA
SASKATCHEWAN
MANITOBA
ONTARIO
QUEBEC
NUNAVUT
NEWFOUNDLAND
ATLANTIC OCEAN
PRINCE EDWARD IS.
NOVA SCOTIA
NEW BRUNSWICK
PACIFIC OCEAN
USA

supply interpreters so that Inuit staff are not forced to speak English during internal meetings.

In order to increase its knowledge of traditional values and world-views, each government department should invite elders to run orientation sessions for non-Inuit staff and they should also be consulted on all policy, strategic planning, business planning and development sessions to ensure Inuit tradition and beliefs are respected during program and policy delivery. In the future, in Nunavut, there should be greater efforts made to research and record Inuit Qaujimajatuqangit-related topics for publication and mass distribution, to be used in creating Inuktitut teaching materials and to increase Inuit self-awareness.

Another important issue that has been suggested is to make government working hours more conducive to Inuit lifestyles. Government employees should get 'traditional leave' at certain times of the year to go caribou hunting, goose hunting, whale hunting, clam digging and berry picking.

The report finally states that a government Inuit Qaujimajatuqangit monitoring committee should be set up to examine the work conducted by agencies serving the Inuit. This task force was set up at the beginning of 2001 and it is supposed to monitor the work of the cabinet, the legislative assembly, the police and the Department of Justice in Nunavut (Nunatsiaq News 2001).

BEST COPY AVAILABLE

Women's Issues in Nunavut

Family violence has escalated over the last few years in Nunavut. The Status of Women Council, "Qulliit", and Nunavut Social Development Council (NSDC) have recommended that the Nunavut government adopt a Canadian national policy of "zero-tolerance" towards violence against women and children. NSDC suggests that a "community-wellness strategy" should be adopted, which means addressing violence through programs for batterers, counseling for both men and women and involvement of the broader community. In an interview, the president of the Nunavut Status of Women Council agrees to the community approach but she think there is also a need for caution. In the communities, some elders wants to address domestic violence via Inuit Qaujimajatuqanit but things are not the way they were before, especially due to alcohol and drug-related assaults, which are predominant in Nunavut (*Nunatsiaq News*:2000:Oct.13). This could be a potential problem for Inuit women in Nunavut with regard to the IQ policy.

References:

Department of Sustainable Development (1999): Inuit Qaujimajatuqangit Framework, Iqaluit

Arnakak Jaypetee (2000): "What is Inuit Qaujimajatuqangit?" *Nunatsiaq News*, August 25

***Nunatsiaq News* (2000):** " GN urged to adopt 'zero tolerance' resolution on family violence" October 13

***Nunatsiaq News* (2001):** "Nunavut's Inuit Qaujimajatuqangit group gets started" February 2

Report from the September Inuit Qaujimajatuqangit Workshop (2000) Niaqunngnut, Nunavut, September 29-30 Nunatsiaq News Iqaluit

NUNAVIK

The Nunavik Commission: Release of the Report in 2000

The Nunavik Commission, whose mandate is to propose a form of self-government for the Arctic territory of the Province of Quebec (Canada), should release its report in April 2001, after a little less than one and a half year of work.

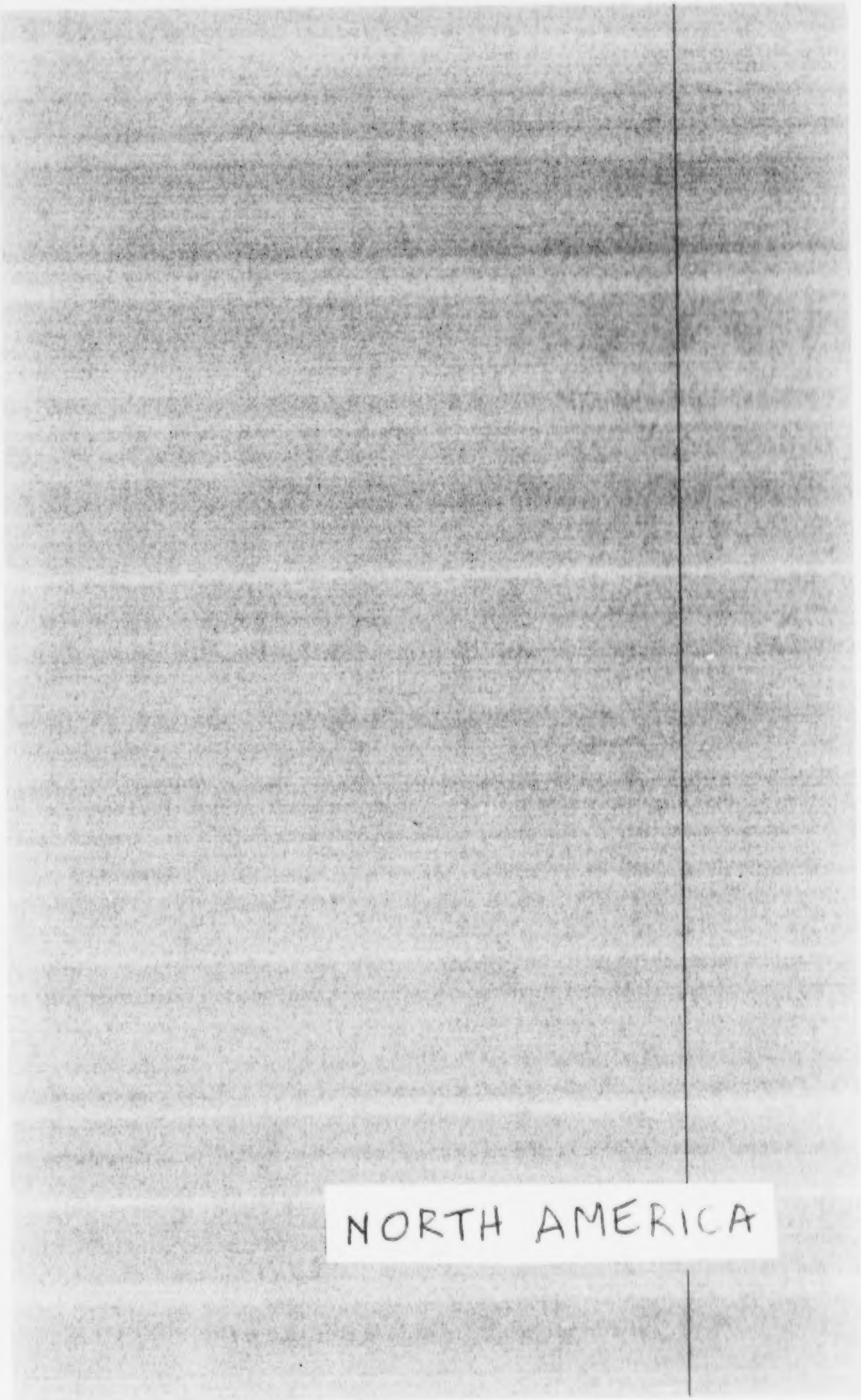
Some 10,000 people inhabit Nunavik, a vast territory of 500,000 square kilometres, representing one third of the area of the Province of Quebec. The population is divided into 14 coastal villages. About 90% of the population is Inuit. The territory has a strong potential for economic development since it contains important mineral and wildlife resources. These resources are still exploited by the Inuit population, mainly as important food sources.

The Nunavik Commission was created in 1999 from a political agreement between the governments of Canada and Quebec, and the Inuit of Nunavik represented by the Makivik Corporation. The Commission is composed of 3 members appointed by the government of Quebec, 3 members by the Inuit, and 2 members by the government of Canada. It is headed by two commissioners, one appointed by the Inuit and the other by the government of Quebec, who act as co-chairs of the Commission.

Its mandate is to propose a comprehensive set of recommendations on the design, operation and implementation of a form of government in Nunavik, more specifically on the powers of such a government, the electoral process, the selection of leaders and executive members, relations with other governments, financing, measures to promote and enhance the Inuit culture, including the use of inuktitut in the Nunavik Government, and transitional measures.

In order to achieve its objectives, the Nunavik Commission conducted a vast consultation. All villages of Nunavik were visited, and the Commission held public hearings, meetings with municipal councils, with high school students and with local and regional organizations. It examined briefs submitted by organizations currently involved in public services in Nunavik, and consulted departments from the Quebec and Canada governments. Moreover, the Commission held consultations with neighbouring Aboriginal organizations that have some interest in Nunavik, such as the Cree, the Naskapis and the Innus.

The Nunavik Commission is not the first step in the implementation of self-government in Nunavik. In fact, over the last 30 years, the Inuit of Nunavik have reiterated their will to establish an appropriate form of self-government. The James Bay and Northern Quebec Agreement granted them a form of administrative autonomy and, in specific fields such as education, some extended powers. Nevertheless, discussions regarding this issue have never really halted; the Inuit have tried to build a consensus among themselves regarding the type of government they wish to establish. The Nunavik Commission marks, then, a decisive step in this historical process. Indeed, the recommendations that will come out of the Commission should be used as a basis on which to start the negotiations between the three parties.


NORTH AMERICA

BEST COPY AVAILABLE

NORTH AMERICA

CANADA - I

First Nations Relations in Canada at the End of the Second Millennium

Any attempt to select and discuss two or three key issues for the year 2000 requires a caveat. 2000 was the final year of a millennium in which the second half began with a debate as to whether "Indians have souls". The millennium culminated, in Canada, with a Royal Commission on Aboriginal Peoples devoting an entire chapter to the need for an entirely new inquiry into the effects of Indian residential schools – including a 50% mortality rate achieved by some of those institutions. So we must begin with a reminder that most First Nations relations continued in the way they have since Confederation, despite new ground being broken here and there.

The "here and there" where new ground was broken can be identified by three signal events: (1) the ratification of the *Nisga'a Final Agreement*, by the British Columbia Legislative Assembly and the Canadian Parliament; (2) the first full year of the new territory of Nunavut in which an Inuit majority holds sway for the moment (see also the article on Nunavut); and, (3) the aftermath of the two Supreme Court *Marshall* decisions, the first allowing that under a Treaty of 1760-61 the Mi'kMaq nation has a continuing fishing right which, the Court said, allows the members of that nation to gain "a moderate livelihood" and the second backtracking on that decision by emphasizing the right of the federal government to make fisheries regulations.

The "same old, same old" recurred in situations too numerous to mention. I shall touch only on the most evident: (1) the findings published in the *Canadian Medical Association Journal* October 2000 issue, that one key predictor of urban child poverty was being the child of Aboriginal parents in a Canadian city; (2) the continuing high rates of incarceration of First Nations people, largely for crimes arising from material impoverishment compounded by four generations of residential school child rearing; (3) the characterization of the Nisga'a treaty by the Official Opposition in both the federal Parliament and the B.C. Legislature as "race based" in a right wing move to deny reality to the national and cultural identity of the First Nations in general or the Nisga'a in particular, and (4) the federal Minister of Indian Affairs and Northern Development, Robert Nault, continuing - in the rhetoric of his predecessors - to deny that his

GREENLAND
CANADA
UNITED STATES
OF AMERICA
PACIFIC
OCEAN
ATLANTIC
OCEAN
MEXICO

department had responsibility for First Nations people living outside of reserved land (as more than half the First Nations population do) despite section 92(24) of the *Constitution Act, 1867* stipulating that the federal Parliament has jurisdiction over both "Indians and lands reserved for the Indians."

The significance of parliamentary ratification of a modern-day treaty should not be under-estimated. Nor should either a Supreme Court decision attaching even modest weight to a treaty signed long before Canadian Confederation or the coming into being of an Inuit majority territory.

The Nisga'a Treaty

The Nisga'a began petitioning for recognition of their Aboriginal title over the Nass River Valley in British Columbia over a century

BEST COPY AVAILABLE

ago. Its proponents say that the treaty allows for a significant measure of self-government despite serious constraints, e.g. dependence on federal funding and a requirement to follow provincial standards in respect to education and health issues.

The willingness of the Liberal Government in Ottawa and the New Democratic Government in Victoria to press on with ratification of the treaty despite considerable parliamentary opposition testifies to genuine efforts to extend some respect to the repeated admonitions of the Supreme Court regarding the continuing force of Aboriginal rights. The messages on several First Nations web sites and e-mail lists show as much opposition to the treaty within the First Nations for reasons quite opposite to those of the parliamentary opposition: the self-government provisions do not provide genuine autonomy and the land title of the Nisga'a under the treaty covers a small portion of their traditional lands under dubious terms. First Nations adjacent to the Nisga'a said that the Nisga'a treaty prejudiced their prospects of a comparable deal. Right wing senators seized this plea as a further excuse to oppose ratification.

The Mi'kMaq and Fishing Rights

Most complex is the decision in the *Donald Marshall Jr.* case. Marshall, who previously served 11 years on a wrongful conviction for murder, was prosecuted for catching eels out of season. On the basis of a 1761 treaty guarantee of "a truck house" at which the Mi'kMaq and Maliseet might sell their catch from hunting and fishing, the Supreme Court decided that the Mi'kMaq had a continuing right to fish for a moderate livelihood. Following the Supreme Court decisions in the fall of 1999, fishermen up and down the New Brunswick and Nova Scotia coasts attacked Mi'kMaq fishing boats and lobster traps while the RCMP provided little or no protection. In an almost unprecedented move, the Supreme Court responded to a request from the Attorney General of New Brunswick and the West Nova Fishermen's Coalition to provide clarification. Although the decision chided the government and the opponents of treaty rights and rejected their petition, asking the Court to reconsider its previous ruling, the Court nonetheless responded in a decision known as *Marshall 2*. It also emphasized the government's authority to regulate the exercise of these rights. During the last lobster season, in fall 2000, the Government attempted to impose harsh limits on the Mi'kMaq fishery while offering to subsidize the cost of equipment for those Mi'kMaq fishers who would submit to their authority. This seemed to have more to do with the historic divide-and-rule strategies of colonialism than with the treaty-affirming approach of the Supreme Court.

On the other side of the Mi'kMaq fishing rights issue, the National Chief of the Assembly of First Nations, Matthew Coon Come, asked whether any other people in Canada were restricted by court order to "a moderate livelihood". At year's end, several legal cases were pending: federal fisheries charges against Mi'kMaq fishers; Mi'kMaq suits against the RCMP and the Dept. of Fisheries; and, Mi'kMaq suits against the province (and vice versa) regarding the application of the same treaty to other natural resources such as game and timber.

Government's Policy Pretensions versus the Supreme Court's Attempts to Extend the Rule of Law to First Nations: two different approaches

More than half the Aboriginal population of Canada live in urban areas. Urban Aboriginal people are materially more impoverished than their on-reserve relatives: they lack the prospect of supplementing their livelihood with subsistence fishing and hunting. Many move back and forth between reserve and city on a frequent basis. Those who spend more than six months away from their reserve lose federal benefits, including not only supplementary health care but also post-secondary tuition.

Observers of First Nations relations in Canada have remarked for quite some time that the decisions of the Supreme Court are far ahead of the conduct of the Government and, further, that the Government is not particularly compliant with the instructions and orders of the Court. My own refinement of this view is that the Government continually tries to find a position mid-way between the decisions of the Supreme Court – which view the guarantees of Aboriginal and treaty rights in the Constitution as a sacred promise – and the position of the Official Opposition, the Canadian Conservative Reform Alliance Party – which would repeal the constitutional guarantees, abolish Aboriginal and treaty rights and dissolve any protection for Aboriginal peoples. The continuing Liberal effort to find a middle ground harks back to the era of Prime Minister Mackenzie King in the 1930s and 40s. It was famously said of Mackenzie King that he would never do by halves what could be done by quarters.

This is a strategy that worked far better in an era of repression than in an era with pretensions of reconciliation. It is not a strategy calculated to reach out to the remote areas of Canada where some people carry on traditional pursuits, some youth sniff gasoline and many children go to bed hungry.

CANADA - II

The First Nations Governance Act and First Nations Financial Institutions Act

In Canada, April 17, 2001, marks the 19th Anniversary of the adoption of the Constitution Act 1982. Section 35 of the Canadian constitution recognizes and affirms the "existing aboriginal and treaty rights of aboriginal peoples."

Yet the federal government has announced it plans to use its massive Parliamentary majority to change the legal status of Indian communities, by passing the "**First Nations Governance Act**", which will impose municipal type status and is intended to alter the current legal status and capacity of an Indian Band. As this is written, details of this legislation are found in two federally-released documents. The first one describes the key aspects of the proposed law: Legal Status of First Nations (Band); Roles and Responsibilities of Chiefs and Councils; Delegation Capacity of First Nations and/or Chief and Council; Capacities to create Band corporations/commissions; Standards respecting legal proceedings by and against Council. Document 2 describes the core elements of the proposed law: Governance Authorities; Financial Management, Accountability and Redress; Elections Consent and Referenda. The proposed legislation will be connected to another piece of draft legislation, the "**First Nations Financial Institutions Act**", which is intended to facilitate the removal of the tax exemption most Indians (First Nations) currently possess.

In 1996, the federal government tried to amend the *Indian Act* but this was soundly rejected by 85% of the Indian Bands across Canada. On December 12, 1996, faced with such opposition from First Nations, the then Minister of Indian Affairs, Ron Irwin, decided - literally at the last minute - to declare that the *Indian Act* amendment package would be "optional". Despite this last minute maneuver, First Nations knew the federal intent was to force them into the new legal arrangement, and so they kept up their opposition.

In 1997, Bill C-79, the *Indian Act Optional Modification Act*, died a death when the 1997 federal election was called. The federal government is now trying once again to re-package the 1996-97 *Indian Act* amendments package into two pieces of legislation, the "**First Nations Financial Institutions Act**" and the "**First Nations Governance Act**".

The *Indian Act* has not been significantly amended since 1951, although there have been piecemeal changes to the lands, membership and elections provisions. The federal Minister is attempting to use the fact that there are over 200 cases before the courts involving the *Indian Act*. However, at a meeting with the Assembly of First Nations on April 11, 2001, federal officials acknowledged that the vast majority of the court cases involve disputes over membership provisions, not the sections of the Indian Act the Minister of Indian Affairs intends to change.

From the 1996-97 *Indian Act* amendment experience, it was clear then, and it appears to be the same now, that the federal desire to change the *Indian Act* has more to do with attempting to restrict the legal status of First Nations self-governing powers while simultaneously dismantling the fiduciary, trust-like responsibilities and obligations for providing ongoing federal programs and services to meet the basic needs of First Nations peoples.

To put it plainly, all indications are that the federal government wants to "off-load" or devolve responsibility for providing programs and services to First Nations onto the provinces and to the Bands themselves. The "First Nations Governance Act", along with the "Financial Institutions Act" appears to be a new "statutory and regulatory regime" for furthering this quiet objective.

An internal Department of Indian Affairs document concedes that program sustainability is uncertain because "Demographic price + volume demand are outstripping fiscal supply." This is an acknowledgement that the First Nations population is young and rapidly growing at a rate higher than the Canadian average and, of course, this means increasing costs to the federal government in order to maintain its responsibilities.

To conclude, Canada's Throne Speech of January 2001 and the Prime Minister's response both highlighted the need to address the particular needs of Aboriginal children, the majority of whom live in poverty. The question remains: will Prime Minister Jean Chretien maintain his out-dated views on the rights of First Nations, which were reflected in his "1969 White Paper Policy on Indians", or will he recognize, as the Canadian courts have, that Aboriginal and Treaty rights are now constitutionally protected in section 35, and that a "generous, liberal interpretation of the words of the constitutional provision is demanded"? The unilateral actions of his Minister of Indian Affairs to force legislation on First Nations seems to indicate that Prime Minister Chretien is continuing with his assimilationist views from the past, rather than recognizing the First Nations right to self-determination.

CANADA - III
NORTHWEST TERRITORIES

Resource Development and Self-Government

For the Northwest Territories' Aboriginal peoples, the past year was dominated above all else by one pressing issue: non-renewable resource development. World commodity prices and market demand have brought a resurgence of interest in the Territories' resource potential, and throughout the Mackenzie Valley there is renewed activity in the oil and gas, mining and forestry sectors. In the Slave Geological Province, this process is well underway, with the Ek'ati diamond mine in commercial production, the Diavik mine receiving regulatory approval in 2000 and now under construction, and a number of other diamond and base metal mine projects being actively pursued. The Deh Cho region has experienced a substantial natural gas rush around Fort Liard, which is expanding to include other communities, as well as interest from developers in several mine projects. The Mackenzie Delta/ Beaufort region has also seen increased spending by the oil and gas industry on exploration at levels not seen for years. After nearly a twenty five-year hiatus, serious consideration is again being given to the construction of a pipeline down the Mackenzie Valley, as one of several possible routes for bringing natural gas to southern markets. In just a short time, a broad consensus seems to have emerged among the federal and territorial governments, industry, and some Aboriginal groups, that a viable economic future for the NWT and its residents lies with the exploitation of its non-renewable resources.

With all these development pressures, Aboriginal governments are scrambling to keep pace and their already limited human and financial resources are being severely strained. In the past, mining and oil and gas developments in the NWT have always gone forward without Aboriginal consent, provided only temporary benefits to community residents, and too often left behind lasting environmental and cultural damage. As viewed by government and industry, Treaties 8 and 11 (and the associated "scrip" settlements with the Métis) cleared the way for development and leave the Dene and the Métis with only a minimal say over what happens on their lands. The Aboriginal leadership and elders are keenly aware of this legacy of exclusion and disruption, and are determined that it will not be played out again. They wish to strengthen the socio-economic foundations of their communities, by securing training, jobs, business opportunities and economic income from development projects.

Equally important, they want to ensure that developments are environmentally sound, and that there are no negative impacts on their traditional lands, waters and resources.

Clearly, the NWT is witnessing a significant shift in Aboriginal attitudes toward resource development. This is a far cry from the heated debates that raged in the 1970s over the proposed Mackenzie Valley Pipeline. Instead of opposing pipelines and other non-renewable resource projects, Aboriginal communities now seem prepared to give their qualified support so long as they are involved as full "partners" in developments that take place on their traditional lands. A basic goal shared by Inuvialuit, Dene and Métis alike is to ensure that, in any decisions about resource projects and about the terms under which these proceed, both government and industry respect the historical rights of the NWT's Aboriginal communities and the authority of their governments.

It is instructive to revisit the 1977 *Report of the Mackenzie Valley Pipeline Inquiry* (the so-called "Berger Report"). In this *Report*, Justice Thomas Berger argued that: "a consideration of industrial development and social, cultural and political progress in the north cannot be separated from a discussion of native claims." One of its key conclusions was that, before development could go ahead in the Mackenzie Valley, Aboriginal communities must have time to strengthen their institutions and to secure clearer recognition of their rights under Canadian law. For this reason, Berger recommended that any pipeline development be delayed for ten years to allow for the "settlement of native claims." This analysis seems just as relevant today as it was in the 1970s: the question of resource development in the Northwest Territories remains inseparably bound up with the issue of its Aboriginal peoples' governance and control over their traditional "homelands."

In the intervening years since the Berger Report, the NWT's Aboriginal peoples have made undeniable progress in developing their political and economic institutions, and in starting to address the social and economic problems of their communities. Three regional land claims have been settled—the Inuvialuit, the Gwich'in and the Sahtu—and implementation of these settlements has been underway for several years. Co-management of lands, waters and the environment of the Territories has become a reality in the past ten years, both at the regional and the Territorial levels. Aboriginal communities are now routinely consulted and involved in "multi-stakeholder" processes relating to major government initiatives or development projects. Community and regional organizations have also gained some sophistication in dealing with developers through Joint Venture and Impacts and Benefits Agreements. But, despite these advances, the Aboriginal peoples of the Territories have so far had very limited success in achieving practical recognition of their inherent right of self-government.

Self-government negotiations between the federal Crown and the different Aboriginal regions began in earnest in the NWT back in 1994. Seven years later, there is general consensus on the Aboriginal side that this process has been costly, time-consuming and ultimately unproductive. Probably the closest to finalizing an agreement is the Dogrib Treaty 11 Council, which has been negotiating Dogrib government as part of its comprehensive claim settlement: an Agreement-in-Principle was reached in the spring of 1999, with a final Agreement anticipated by the end of this year. In the Beaufort-Delta region, the Inuvialuit and the Gwich'in have been jointly pursuing a self-government deal with Canada to supplement their already completed land claims, and an Agreement-in-Principle is expected at this table sometime in 2001. Self-government talks in the Sahtu are currently community-based, with the Deline negotiations serving as a test case for the use of this approach elsewhere in the region. Discussions on Aboriginal governance in the Deh Cho region and in the Treaty 8 communities are in more preliminary stages and form part of much broader negotiations aimed at clarifying and elaborating the intent of the original Treaties with the Crown.

From the Aboriginal perspective, the governments of Canada and of the Northwest Territories bear primary responsibility for the difficulties that have occurred in these various self-government talks. On paper, the federal *Inherent Right Policy* appears to hold considerable promise. But, in actual negotiations, Canada has insisted that federal laws must be paramount over Aboriginal laws except in a few jurisdictional areas, and that outside Aboriginal "owned" lands, the rights and powers of Aboriginal governments and citizens will be largely subject to laws of general application. The territorial government's own Self-government policy is very vaguely worded and, in practice, the GNWT negotiators' underlying concern often appears to be to retain as much government power at the territorial level (i.e. in the capital, Yellowknife) as possible.

Time and again, there have been delays in negotiations as territorial and federal negotiators have sought Cabinet mandates to enable them to effectively address issues that arise at specific tables. One major sticking point has been the government negotiators' reluctance to consider strictly "Aboriginal" models of governance. Typically, they have pushed for public or hybrid forms of government on the grounds that the rights of non-Aboriginal residents must be respected in any agreement. Another has been financing, as Canada and the GNWT have played political football on the question of who will pay for the "incremental" costs of implementing self-government. Related to this, the territorial government in particular has dragged its feet in recognizing taxation powers for Aboriginal governments, being key instruments in raising their "own-source" revenues. A third point of contention has been Canada's refusal to negotiate jurisdictional authority over sub-surface development for Aboriginal governments outside of Aboriginal "owned" lands in their traditional territories, beyond sharing a small percentage of annual Crown resource royalties.

Compounding these difficulties further have been recurrent efforts by the territorial government to secure jurisdictional authority from Canada over Crown sub-surface lands in the Territories. Until recently, the so-called "Northern Accord" has been viewed by these two governments as a strictly bi-lateral matter, to be undertaken apart from self-government and other Aboriginal rights negotiations. As such, it has been resisted by most Aboriginal groups who recognized that this devolutionary transfer would only strengthen the powers of the territorial government and undercut the integrity of their self-government talks.

However, in the past two years, the terms of the proposed Northern Accord have changed, as both Canada and the GNWT have shown some willingness to include the NWT's Aboriginal governments as partners in a comprehensive transfer package. As presently conceived, this Accord would vest both Aboriginal governments and the GNWT with a share of Crown non-renewable resource revenues and jurisdiction over sub-surface development. This proposal is unprecedented in Canada and has potentially major implications for the future financial viability of the Aboriginal governments, who are rightly approaching it with great caution. In the past twelve months, the Inter-governmental Forum—involving Canada, the GNWT, and the NWT's Aboriginal governments—has emerged as a key mechanism for working out the details of a Northern Accord transfer. At this point, whether the Forum will succeed in this difficult task remains an open question.

CANADA - IV
THE INNU NATION

The leadership of the Innu Nation and in the two Innu communities in Labrador continue their struggle to find ways of dealing with alcohol and substance abuse. A radical step was taken in mid November by the Innu leadership when they asked the provincial government of Newfoundland to remove a group of troubled children from their homes. It has come to the point now, said the President of the Innu Nation, Peter Penashue, where there are a substantial number of young people, as young as seven years old, sniffing gas in the community. One of the health hazards prompting this action was that the children were sitting by campfires in the forest sniffing gas from plastic bags.

An underlying issue here is that the Department of Social Services has the legal means to take such action, and has the resources necessary to provide the needed support, as opposed to the Innu Nation or the Band Councils who do not.

Education

As mentioned in last year's *Indigenous World,* in November 1999, the governments of Canada and Newfoundland entered into an agreement with the Innu Nation to transfer control of education and policing their own communities, for example using Innu constables, to the Band Council in each community, and to give the Band Councils the jurisdiction they need to handle the alcohol and solvent abuse. It has frustrated the Innu leadership that governments have not followed up on this agreement. "We realize that the problems afflicting our communities will not be resolved by outside governments or agencies, "says Peter Penashue in a press release from the Innu Nation in November 2000, "but we can't even pass a bylaw against littering, much less take action against alcohol and gas sniffing, deliver education to our children or effectively police our community. Until the agreements we have reached are given some effect by Canada and Newfoundland, we will never have the tools and resources that we need to be effective."

With respect to schooling, it is an enduring problem that while the children all speak Innu as their first language, the curriculum is all in English, except some material provided in the first grades. It is also a major problem that the curriculum in no way reflects the culture and life of the Innu.

Land Claim Settlement

In June of 2000, the Innu Nation tabled a proposal with Canada and Newfoundland for a fair and just settlement of their land rights. In a press release, the Innu Chief Negotiator Daniel Ashini said that the Innu Nation's proposal would provide recognition for Innu self-government powers over 10,000 square miles of territory in Labrador: "On this land, we would be able to govern ourselves in accordance with the treaty, and develop an economy while protecting the land and our traditional way of life. This size area is consistent with many of the other land claim settlements in the Northwest Territories, Nunavut and in the Yukon. We also want to participate in co-management arrangements with Canada and Newfoundland over a larger region of Labrador. In these areas, Innu could also benefit from royalty and resource development revenues, giving us a chance for economic self-sufficiency." On the basis of a positive response from the federal government of Canada and the government of Newfoundland, the Innu Nation believes that it could conclude an Agreement in Principle by the end of the year, and a Final Agreement within 2 years. In an article published in December in a major Canadian newspaper, *The Globe and Mail*, the President of the Innu Nation Peter Penashue writes: "We are currently in claims negotiations and we remain hopeful that Canada and Newfoundland will change their positions on the amount of land and resources they want the Innu to give up. If Canada's and Newfoundland's proposals prevail, we won't have sufficient land and resource revenues to build a self-sufficient economy; we will remain welfare dependent. Is that what Canadians want? Even as the Innu are negotiating claims with Canada and Newfoundland, Canada and Newfoundland continue to give our land and resources to third parties to develop. The Upper Churchill hydro-development, Voisey's Bay nickel mine and the massive hydro-development of the Lower Churchill River are but a few examples. The Innu have asked for a moratorium on these developments until their claims are settled. Canada and Newfoundland have refused.

In good faith, we have been negotiating with Voisey's Bay Nickel and Newfoundland and Labrador Hydro with respect to the current proposals for Lower Churchill and Voisey's Bay, but we take the position that these projects cannot go ahead without our consent. If these projects prove compatible with our way of life, and we can get the same rate of return that all Canadians would find fair, then perhaps the projects can proceed. But we refuse to give our land and resources away."

Military Training

Military flight training over 130,000 square kilometres of Labrador and northeastern Quebec has been conducted by European countries under a Multinational Memorandum of Understanding from CFB (Canadian Forces Base) Goose Bay since the early 1980s. The majority of the approximately 6,000 annual training flights are conducted by fighter jets flying at low level (less than 100 feet above ground level). Innu people have long opposed military activities over their homeland, primarily due to concerns about the impacts of jet noise and pollution on humans and wildlife.

An environmental assessment of low-level flying activities was conducted on the basis of an environmental impact statement (EIS) prepared by the Canadian Department of National Defence in 1994. The 1994 EIS stated: "The LLTA's (low level training areas) are not approved for supersonic flight, nor are there any plans to approve any such supersonic flight under the Multinational Memorandum of Understanding." In spite of this, in July 2000 the Canadian Department of National Defence gave the Innu Nation three days notice that Royal Netherlands Air Force would be conducting supersonic test flights over the Innu hunting grounds. When the Innu Nation launched a court challenge, the flights were postponed until June 2001.

The rationale given by the National Defence for breaching the 1994 prohibition is that it was based on a project description, which, at that time, did not include supersonic flights. With the introduction of the new fighter aircraft (the Eurofighter Typhoon), which will be operational approximately three or four years from now and which will have supersonic cruise capability, they now see a need to facilitate supersonic flight training at Goose Bay.

Of particular concern to the Innu Nation are the potential risks of supersonic activities on Innu hunters and wildlife. One expert explains that supersonic flyovers at 5,000 feet can generate shock waves that can produce irreversible damage in human lungs, viscera, ears and can also cause brain damage. A human being directly under the flight path of an aircraft flying supersonically at 15,000 feet would be likely to be exposed to sound in excess of 130 dB, which is the threshold for pain.

Sources

Innu Nation, Environmental advisors Larry Innes and Stephan Fuller
The Globe and Mail, December 7, 2000

THE UNITED STATES OF AMERICA

With the beginning of the new millennium, Native peoples in the United States continue to battle for greater self-determination. Consequently, indigenous peoples are addressing issues concerning the sustainable development of reservation lands, the protection of sacred sites on public and private lands, the ownership of intellectual property, the gambling industry, problems with the Native American Graves Protection and Repatriation Act, and the role of state and federal agencies in tribal affairs.

Demographic realities and health factors are major obstacles to more self-governance and self-sufficiency. According to the 1999 census, 2.4 million people identify themselves as Native Americans. Only 1.7 million of these individuals are actually enrolled in a federally recognized tribe, however. Of enrolled tribal members, approximately 900,000 live on reservations. The remaining population resides mostly in urban areas located in one of six states: Oklahoma, California, Arizona, Alaska, Washington, or New Mexico.

Because of high mortality rates, the average age amongst Native Americans is eight years younger than the population at large. Cardiovascular disease is the leading cause of mortality among Native peoples. Among teenagers and adults in their early twenties, homicide, suicide, accidents, and alcohol-related deaths are endemic problems. The Bureau of Indian Affairs [BIA], the agency that oversees Native affairs, estimates that alcohol-related deaths among Native peoples are four times greater than the United States average.

Unemployment continues to plague Native peoples. Approximately 50% of the adults living on the more than 300 reservations in the United States are unemployed. Of the adults employed, 30% live below the poverty guidelines established by the Department of Health and Human Services. If all enrolled Native Americans are included, unemployment stands at 14.4%, as compared to 6.3% for the rest of the United States' citizens.

In order to fulfill President Clinton's Native American Initiative discussed during his visit to Pine Ridge Reservation in 1999, the Bureau of Indian Affairs (BIA) has requested $9.4 billion dollars for 2001 from the federal budget. This is 14% more than was requested in 2000. With this money, the BIA wants to strengthen programs critical to the future of Native peoples. These programs include the education of 50,000 elementary and secondary students attending 185 schools; the continuation of 25 tribally-controlled community colleges; the training of law enforcement personnel; social services for the elderly and disabled; better management of trust land resources; the maintenance of over 25,000 miles of roads on rural and isolated reservations; and the implementation of land and water claim settlements.

Sustainable Development of Reservation Lands

Two conditions, chronic to reservations, limit the ability of tribal councils to create opportunities for sustainable development. First of all, reservation land is held in trust by the federal government. As a result, the BIA's responsibility to aid the efforts of Native communities to obtain greater self-determination are in conflict with the agency's role as protector of the reservation's resources. The case Cobell versus Babbitt clearly illustrates this problem. As Secretary of the Interior during Clinton's administration, Babbitt oversaw the Bureau of Indian Affairs. While acting as Secretary of the Interior, Babbitt was sued by Elouise Cobell over the Bureau's management of trust funds. As the lead plaintiff, Ms. Cobell was requesting that the BIA provide the records of over 500,000 individual trust accounts. These accounts include royalties for the leasing of allotted land to ranchers and farmers as well as corporations involved in resource extractions. Currently, the Department of the Interior cannot find records for 100 million trust funds or 2.4 billion dollars held in escrow for Native peoples. In 1999, Royce Lamberth, a Federal District Judge found Babbitt, as well as the Secretary of the Treasure and former Secretary for Indian Affairs, in contempt of court. The judge is demanding that the BIA determine all monies owed to Native peoples, beginning with the Allotment Act of 1887. Presumably, the problem will be resolved by Gale Norton, President Bush's appointment to the Secretary of the Interior.

A second factor that limits a tribe's ability to gain greater self-sufficiency and self-determination is the often abysmal educational facilities on reservations. According to the 2001 BIA budget report, many reservation schools are structurally unsound and/or of insufficient size to educate incoming students. Only 65.5% of Native peoples graduate from high school, compared with 75.2% for the U.S. population as a whole. Even worse is the fact that a mere 9.3% of Native students graduate from college versus 20.3% for the nation at large. Without decent educational opportunities, few businesses are interested in investing resources on reservation lands.

President Bush promised to provide 1 billion dollars to Native American schools during his campaign. Whether this will be reflected in his budget is not yet known. Without these funds, though, it will be impossible for the Federal Government to meet the goals

Photo: Michaelle Vignes

BEST COPY AVAILABLE

of the American Indian Initiative [AII]. Introduced during the end of President Clinton's term, the AII's purpose was to channel medical, economic, and educational resources into the reservations.

Native American Gaming

Native American gaming has become for some Native reservations a viable economic alternative to unemployment and high poverty rates. In 1987, the Supreme Court of the United States passed the Cabazon decision, which permitted gambling on Native reservations. Due to the phenomenal growth of the industry, Congress passed the Indian Gaming Regulatory Act (IGRA) in 1988. Basically, this act provided a regulatory framework and supervisory body for reservation gambling. Half of the over two billion dollars generated from this activity is received by ten of the 184 tribes involved in the industry. Although the Supreme Court permitted Native communities the power to determine whether or not they wanted to offer gambling, the IGRA has successfully ruled that a tribe must enter into a compact with the state in which the reservation is located. Some states have been hesitant or even hostile to the possibility of legalized gambling within their boundaries. This has proved to be of major controversy in the state of Nebraska, for example. In this area, the Santee tribe has opened a casino that provides slot machines. Twenty-three jobs have been created as a result. Unfortunately for the Santee, Nebraska legislators perceive the casino as illegal since the tribe never entered into a compact with the state. Each day that the casino remains open causes the tribe to be fined several thousand dollars. Even so, the tribe held a special election and voted to keep the casino operating. Ultimately, they hope that the people of Nebraska will also vote to permit them to continue running a casino. Unfortunately, the legislature has yet to allow the issue to be voted on by the citizens of the state. During the last two years, the state committee responsible for this issue has kept the other legislators, as well as the state's citizens, from voting on the Santees' right to offer gaming.

It is unclear if Gale Norton, in her role as the Secretary of the Interior and the ultimate overseer of Indian affairs, will aid the Santees' struggle against the state of Nebraska. Her views on state versus tribal rights are difficult to determine. At the time of her confirmation to Bush's cabinet, Norton stated, "decisions of government are best made by those who are affected. What is true for states is true for tribes. Self-governance is important and I support this as a concept."

Environmental Protection of Native Lands

Beginning in the 1980s and continuing through the 1990s, the Nuclear Regulatory Agency has attempted to entice reservation communities to accept nuclear waste. As an incentive, Native councils willing to listen to various proposals concerning the creation of nuclear dumps were offered financial incentives of several hundred thousand dollars. Because the state of Oklahoma has the most Native communities, with varying amounts of land, these tribes have become the main targets for the agency. In response, 31 tribes in Oklahoma formed the Inter Tribal Environmental Agency [ITEC] to keep these dumps off of their lands. At a national level, Native communities have formed the National Environmental Coalition of Native Americans [NECONA] to help maintain reservations free of nuclear waste dumps.

In May 2000, Native communities in the Mojave Desert of California successfully halted the storage of nuclear waste in Ward Valley. With the help of NECONA and a consortium of environmental groups, the project was stopped in order to protect the desert tortoise and running trails sacred to Native peoples in the region.

Hopefully, the Pyramid Lake Paiute tribe of Nevada will be equally successful in halting the development of a sewage treatment plant by the Truckee Company based in California. According to the Paiute, the 42 million dollar sewage expansion project will negatively impact on the Truckee River and Pyramid Lake. Both of these regions are important to the subsistence needs of the Pyramid Lake Paiute community.

Protection of Sacred Sites on Public and Private Lands

Native peoples have had little success in protecting sacred sites that are not located on tribally-owned land. Invariably, the Supreme Court has ruled against Native peoples on this issue. In 1996, President Clinton addressed the issue by requesting that federal agencies, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites. A caveat to these laudable points, however, is the fact that they are mere suggestions. Currently, federal agencies are under no legal obligation to protect sites that affect the usage of lands under their control. As a result, land containing sacred sites can continue to be used according to the mandates of the federal agency regulating the region. If the site is on public lands, it cannot legally be set aside for the sole purpose of Native activities. According to the Supreme Court, no one ethnic group can be allowed greater access to the nation's public space than any other persons residing in the United States.

In response, some federal agencies, particularly some members of the National Park Service, are providing information to visitors requesting them to respect Native uses of the area. As a result, rock climbers are requested not to use pylons on sacred mountains in the Southwest, California, the Northwest Coast area, and the Black Hills in the Northern Plains. In addition, tourists are asked not to take pictures of Native peoples involved in religious activities at sacred sites on public lands. At this time, a person's adherence to these guidelines is totally voluntary.

Land Claims

Numerous Native communities have fought to regain land illegally taken from them in the past. Although, in 1983, the Timbisha Shoshone Tribe was promised a permanent land base in Death Valley, they have yet to be given any acreage. This battle is currently wending its way through the federal court system. Numerous other Native communities are striving to gain federal recognition and also to obtain ownership of land illegally taken from them. This has led to some infighting between federally and non-federally recognized communities. Since Congress tends to limit the amount of money they appropriate to Native peoples, federally-recognized tribes are concerned that an influx of newly-recognized communities will diminish the amount of monetary resources available. This fear is not unfounded. In general, Congress tends to split the pie into smaller pieces rather than adding money to the whole. Presently, over thirty Native communities are attempting to gain federal recognition. This is an arduous journey, as the community needs to meet numerous criteria to gain federal affiliation.

Intellectual Property

Native peoples are continuing to fight for the right to control the use of their symbols, names, and knowledge. Many names used by professional and amateur sports teams have been appropriated from Native peoples. At the professional level, the Atlanta Braves and the Redskins have yet to change their names even though Native leaders have continually asked them to do so. There is a similar situation with numerous high school sports teams as well. So far, the courts have ruled that tribal names and symbols are in the public domain and consequently are considered to be unprotected by copyright law.

Native American Graves Protection and Repatriation Act

Passed in 1990, the Native American Graves Protection and Repatriation Act [NAGPRA] protects skeletal remains, burial goods, and ceremonial objects associated with federally-recognized tribes. NAGPRA only covers items that are held by institutions receiving public funds, however. Items owned by private collectors, located on private lands, or taken during battles are not covered by the act. In addition, skeletal remains of unknown tribal affiliation are not covered by the act. In an unprecedented decision, the University of Nebraska agreed to return all unaffiliated remains to Native peoples in the Great Plains. Unfortunately, indigenous communities in the region have yet to come to an agreement on a place for the burial of these individuals. Hopefully, they will design a structure to deal with these individuals of unknown ancestry and return them to the earth.

MEXICO AND
CENTRAL AMERICA

BEST COPY AVAILABLE

MEXICO AND CENTRAL AMERICA

MEXICO

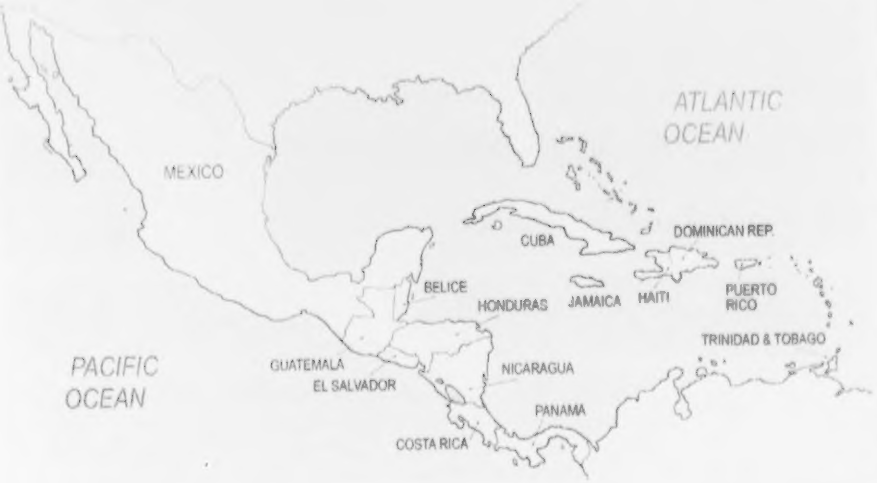
The most noteworthy events in Mexico of significance to the indigenous world can be summarised in two: a) the electoral process, in which an opposition candidate was the victor and, b) the successful Zapatista march/motorcade, held during the months of February and March 2001, the main aim of which was to build a national consensus around recognition of the rights of indigenous peoples.

The combination of the transformative interval (which opened up the path to political alternation) and the Zapatista march has created, since December 2000 (date when Vicente Fox of the National Action Party – PAN – took over as President of the Republic) an extraordinary opportunity that has opened up real possibilities for the Congress of the Union – Chambers of Deputies and Senators – to spend time creating the necessary consensus around constitutional reform in the areas of indigenous rights and culture, responding to the commitments made by the federal government to the Zapatista National Liberation Army (EZLN) and which were reflected in the so-called San Andrés Larráinzar Accords of February 1996.

Nonetheless, by the end of the first half of April, two weeks following the Zapatista withdrawal from Mexico City, things were not clear with regard to the extent of the rights to be recognised. The main point at issue, repeatedly expressed by the main political actors, is their doubt as to the scope of indigenous rights, in particular in relation to recognition of the right to self-determination and its achievement through autonomy.

Once the commitment to reform the Constitution was made by the legislators, it still remained to be seen how deep such a reform would be able to go. And whilst, in fact, following the Zapatista march, conditions to legislate on indigenous rights have never been better, it is nonetheless not certain that the results - in terms of the scope of rights - will maintain a high profile. The Mexican political class – particularly the political parties – have shown a tendency to gradually reduce the extent of what was achieved at San Andrés. This concern is a valid one given that, between 1996 and 2000, each

BEST COPY AVAILABLE


ATLANTIC OCEAN
MEXICO
DOMINICAN REP.
CUBA
BELICE
HONDURAS
JAMAICA
HAITI
PUERTO RICO
TRINIDAD & TOBAGO
PACIFIC OCEAN
GUATEMALA
EL SALVADOR
NICARAGUA
PANAMA
COSTA RICA

Zapatistas gathered at a meeting, Mexico. Photo: Franziska K. Nyffenegger

BEST COPY AVAILABLE

time the negotiations were opened for re-negotiation, they were constantly reduced, both in profile and in scope.

Despite these challenges, it is clear that since Vicente Fox's triumph and the Zapatista march/motorcade, the stage may now truly be set for achieving recognition of the indigenous right to autonomy.

The Indigenous in the 2000 Elections

The results of the Mexican presidential elections on 2nd July 2000 were unexpected. For the first time in more than seventy years, the Institutional Revolutionary Party (PRI) was defeated. But the vote in the indigenous regions brought no surprises. As in the past, the PRI won once more in these regions. The PRI's corporatist system functioned yet again, oiled by a political system that operates via the clientilistic use of social policy resources, particularly those destined for the poor. But, on this occasion, these votes were insufficient to avoid the victory of the PAN candidate, Vicente Fox, who took over the presidency on the basis of the votes in the urban areas and the west and north of the country. The newness of indigenous participation in the electoral process was part of the strategy adopted by some of the indigenous organisations which, on this occasion, did not vote unconditionally for the opposition parties – particularly those of the Left – because these parties had refused to negotiate alliances.

In 1994, a block of the main indigenous organisations in the country organised the First Indigenous National Electoral Convention. At this event, they listened to the indigenous programme and proposals of all the contesting party candidates, with the exception of the PRI candidate, who did not attend the debate. It was also an opportunity for the organisations to put forward a political agenda specific to the indigenous movement. Within the context of the Zapatista uprising and a climate of strengthening within the indigenous movement, the political parties negotiated alliances with some of the indigenous organisations. The result was that the LVI Legislature (1994-1997) had the greatest number of indigenous legislators in the country's history.

However, in 2000, the opposition parties refused to establish agreements with the non-partisan indigenous movement. And so, in May 2000, a block of 6 national indigenous organisations – of all colours, from the Plural National Indigenous Assembly for Autonomy – ANIPA, to the Mexican Indigenous Council, affiliated to the PRI – decided to draw up an indigenous political agenda, which they presented to all the candidates contesting the presidency of the

Republic[1]. Some of the most noteworthy points proposed were: a demand for the fulfilment of the San Andrés Accords, approval of the draft Law formulated by COCOPA, the creation of a Centre for Indigenous Languages, the creation of a National Council for the Development of Indigenous Peoples, demilitarisation in indigenous regions and a call for the cancellation of indigenist policies, enabling indigenous peoples themselves to run the government institutions in charge of indigenous policy.

This list of demands obtained no response from either the PRD or the PRI candidates. To the surprise of the Indians and the rest of the Mexican population, it did obtain a response from Vicente Fox, an overwhelming one in fact: on 14th June 2000, in the daily *La Jornada* newspaper, he published a complete plan in which he took on board the list of these organisations' demands and committed himself to taking up COCOPA's proposed reforms as his own, transforming them into a government initiative, which he would issue on the first day of his government, if he were elected.

In fact, on the first day of taking over as President of the Republic, in his role as supreme chief of the armed forces, President Fox gave instructions to commence the withdrawal of some military posts, to reduce military numbers and to dismantle some of the military camps in Chiapas. At the same time, he sent an initiative for constitutional reform to the Congress of the Union that reflected COCOPA's proposals in the area of indigenous rights and culture within its text. The resistance from the executive power that had been evident during the government of President Ernesto Zedillo was at last gone, although rejection of the proposal was from then on to be concentrated in the hands of the deputies and senators.

At the same time and on the same date, the EZLN announced that it would leave Chiapas for Mexico City in search of a meeting with the senators and deputies in order to gain approval of the mentioned reform. From the moment the march was announced, the Zapatistas made it quite clear that they were going to the capital to support COCOPA's proposal, and that they were not going to meet with the executive or any of its members, and that its motorcade did not have the aim of signing peace or handing over arms. This would not happen until the three conditions for reopening dialogue, the "three signs of goodwill", were fulfilled by the federal executive power.

On 28th March 2001, the climax of the successful motorcade, the EZLN *comandantes* (commanders) were in the Chamber of Deputies appearing before the nation. There they presented their reasons and arguments in favour of indigenous rights, thus fulfilling the goal of the motorcade. And although the results of these negotiations have yet to be made concrete given that, at the time of writing, the Senate of the Republic has still not issued its report on the COCOPA-Fox initiative, the process has now begun and it is hoped that it will be concluded by April. With this event, one stage will draw to a close, and a new era for indigenous rights in Mexico will commence.

The Colours of the Earth Motorcade for Indigenous Rights

The return of the 23 indigenous *comandantes* and *sub-comandante* Marcos to Chiapas, safe and sound, and with the goals achieved plus a good deal of legitimacy gained for their movement and the indigenous cause, was possible thanks to the involvement of many actors, both national and international. And although the balance is positive, it could have been the opposite. For the 36 days of the march/motorcade, a deeply divided Mexico could be observed in the capital, a political class polarised into two broad blocks. The issue of indigenous rights was the backdrop against which two projects for the country were discussed, one aspiring to the possibility of a Mexico accommodating the Indians with full rights, and the other continuing to maintain the idea of a *mestizo*[2] State, a mono-ethnic State, into which the Indians had to be forcibly incorporated.

The march/motorcade took place despite the fact that, in the early days, threats were received, along with a simultaneous and fierce confrontation with power. The first battle was with representatives of President Fox, who requested a discreet meeting with the EZLN in order to reach agreement over issues relating to the security of the march. The Zapatistas refused. The EZLN preferred the accompaniment of the International Red Cross. However, this organisation declined, a refusal that generated an irate response from the Zapatistas, accusing representatives of President Fox of having put pressure on the international body to prevent it from being involved.

The start of the march was preceded by declarations condemning the march from the country's different power groups. Various representatives of business groups demanded the arrest of the Zapatistas the moment they crossed the Chiapas border. Another businessman played down the importance of the indigenous demands, saying, *"the root of indigenous problems can be found in alcoholism, sexist customs and in rows stemming from stupid quarrels. They are just a bunch of idiots."* Yet another representative of this sector described the motorcade as a "Hollywood-esque spectacular".

Some members of the political class contributed to the lynching of the march. The governor of the state of Querétaro called for the death sentence for the Zapatistas, while a local deputy from the state of Morelos challenged sub-comandante Marcos to a duel. A member of the Church, the Bishop of Ecatepec, was of the opinion that sub-comandante Marcos was "nothing but a poor devil" and wrote off the motorcade. Yet others debated the legality of the march, the use of balaclavas and the presence of arms among the protestors. Others, the majority, asked for respect and tolerance.

President Fox himself called on his party members to act sensibly and requested their collaboration in ensuring the safety of the Zapatistas. Alongside this, the Zapatista leadership decided to implement its own security system (initially made up of an Italian solidarity group known as the "Monos Blancos" – an allusion to their white overalls) and decided to hire buses for the journey, leaving their arms in the community of La Realidad, the Zapatista leadership headquarters, under the protection of comandante Moisés.

The EZLN left La Realidad on 24th February, thus commencing a long journey that was to last 36 days. On leaving Chiapas, sub-comandante Marcos gave a speech in San Cristóbal de las Casas and proclaimed the motorcade for *"the rights of those the colour of the earth"*. It is important to note that the aim of the Zapatista march/motorcade was to contribute to peace. When the EZLN withdrew from the negotiating table, it stated that it would only return if the government fulfilled the commitments it had made at San Andrés Larráinzar. Given that the aim of this motorcade was to argue personally in the Congress in favour of constitutional reforms so that these commitments could be fulfilled, the Zapatistas were subscribing to fulfilment of the said Accords. If the deputies and senators kept these commitments, they would be clearing the path for a resumption of dialogue.

The other conditions made by the EZLN (the so-called "three signs" demanded of the executive power before any resumption in dialogue could take place), such as the release of Zapatista prisoners and the dismantling of certain military bases, are gradually being fulfilled and so it is possible that, during the second half of 2001, the dialogue process interrupted in 1996 may be able to be resumed[3]. Prior to coming out of the forest, the EZLN told President Vicente Fox, *"...the Zapatistas do have a voice. If the three signs demanded are fulfilled, there will be dialogue. If there is a serious and true desire for dialogue and peace, the EZLN will respond similarly."*

The Boundaries of Optimism

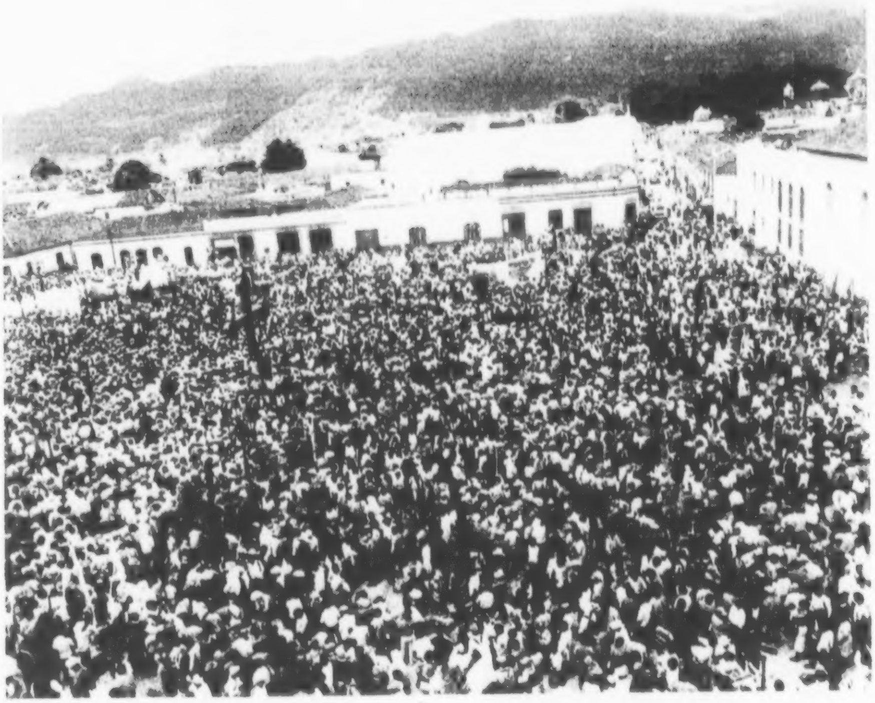
The Zapatista motorcade achieved what seemed to be the impossible: to unite thousands of Mexicans to the indigenous cause. After the deep polarisation the country experienced during the first two weeks of the march, passions finally died down and the threat of a divided or "Balkanised" Mexico gradually diminished.

On 29th March, the day after the Zapatistas appeared before the National Congress, the national daily newspaper *Reforma* published a survey regarding the legitimacy of the demand for indigenous rights and the need for their recognition. More than 90% of those questioned confirmed the need to legislate on indigenous rights. At the same time, those taking a more radical position, such as deputies from the government party itself, the National Action Party (PAN), opposing a President from their own party head-on and refusing to receive the Zapatistas, even having reservations about discussing the issue, in the end agreed to join the legislative commissions formed to debate COCOPA's proposal, transformed into an initiative by President Fox.

It has to be remembered that these events are completely new to Mexico. Dominated by strong presidentialism, with parliamentary life previously dominated by the PRI, no one dared contradict mandates from the President of the Republic. Now, political alternation has brought with it a new relationship between the executive, legislative and judicial powers, which are beginning to become true counterweights. A lack of democratic practices and institutionalised paths for parliamentary debate means that this episode is being characterised by fierce confrontation between parties and powers. Nonetheless, in the end, the debate on the "rights of those the colour of the earth" remains on the nation's agenda.

It is worth noting the importance of the national indigenous movement in these events, grouped around the National Indigenous Congress (CNI), which validated and accompanied the motorcade. Its presence minimised the strength of the arguments that attempted to discredit the Zapatistas as representatives of all Mexico's indigenous peoples. The most important, it concluded, more important than the "representativeness" of the Zapatistas in relation to "all Mexico's indigenous peoples" was that they were, before the Congress of the Union, the bearers of the indigenous agenda that had been expressed in the San Andrés Accords, particularly in terms of recognition of the right to self-determination and its achievement through autonomy. And it could hardly have been any other way. In the course of events, from 1994 to the present day, it has become clear that indigenous rights in Mexico would have gained no visibility, nor any relevance on the national agenda, if they had not had the backing of the guerrillas. Only the force of arms made it possible for the political class, and Mexican society in general, to understand the importance and legitimacy of Indian rights for the democratic life of

Indigenous peoples protesting in San Cristóbal de las Casas, Mexico. Photo: Heidi Moksnes



the country, an understanding which, despite events, still has difficulties in finding its concrete expression.

Given the great resistance and difficulties the San Andrés Accords have had to face up to, optimism regarding the results of the march and what is going to be included within the Constitution needs to be tempered with realism. In fact, everything points to the fact that the scope of indigenous rights to be recognised by Congress will not go as far as that which was agreed at San Andrés and it is even feared that the "spirit of the agreements" may be lost. This is not without reason. The EZLN agreed to sign the San Andrés Accords under protest. The EZLN signed them but called them "minimum agreements".

One of their main objections was that it was not expressly noted in the Accords that autonomy was to be achieved by means of an "Autonomous System", to name but one of the omissions[4]. There was reason for concern. Since the Accords, the so-called "autonomy" has been reduced to a catalogue of rights that are called "autonomous" but which do not fall within the framework of an autonomous system. Nor was the scope of their implementation specified. And so, even though there may have been an intention to maintain the integrity of the COCOPA-Fox initiative, this is limited to a catalogue of "autonomous rights", restricted by and subordinate to State action. And there is a danger that they may yet be even further reduced.

For these reasons, one of the main issues of debate in the said reform revolves around specifying the scope of its fulfilment. Apparently, the most that is likely to be achieved is that it will be established at the community and municipal levels. Thus the scope of autonomous rights will remain reduced to "community autonomy" and "municipal autonomy". Despite these limitations, for the deputies and senators that are now revising the COCOPA-Fox proposal, such rights are "unconstitutional", and so they insist on eliminating some of the commitments signed at San Andrés. Many of them have proposed omitting rights related to "self-determination", "autonomy", "peoples", "communities" and that it should remain limited to "municipal autonomy".

In other words, the indigenous deputies and senators propose recognising indigenous rights but without modifying the Mexican State, without modifying the homogenising principles that underlie the Mexican Constitution: in short, "plus ça change, plus c'est la même chose". And, unfortunately, these limitations have not been overcome, not even in the oft-quoted COCOPA proposal. The model for formulating the recognition of "autonomous rights" drawn up by this body and taken up by President Fox is constructed in such a way that it grants rights at the same time as it limits them. Let us take a look at some examples of rights that are recognised, and the limitations from which they suffer:

- Right to self-determination and, as an expression of this, to autonomy (Art. 4)
  Limitation: as part of the Mexican State (Art. 4)

- Right to decide: their internal forms of co-existence and social, economic, political and cultural organisation (Art. 4)
  Limitation: as part of the Mexican State (Art. 4)

- Right to apply: their system of law in the regulation and solution of internal conflicts (Art. 4)
  Limitation: Respecting individual guarantees, human rights and, in particular, the dignity and integrity of women; their procedures, judgements and decisions will be validated by the State jurisdictional authorities (Art. 4)

- Right to elect: their own authorities and to exercise their own forms of internal government in accordance with their regulations within the sphere of their autonomy (Art. 4)
  Limitation: guaranteeing the participation of women under conditions of equality (Art. 4) and guaranteeing the unity of the National State (Art. 115)

- Right of access: to the collective use and enjoyment of the natural resources on their lands and territories, these being understood as the whole of the environment used and occupied by indigenous peoples (Art. 4)
  Limitation: except those under the direct control of the Nation (Art. 4)

In spite of all the influences that the validity of "autonomous rights" suffers from, it is clear that progress is being made. However, there are still many challenges in the path that obscure the view. There is the fear that once constitutional reform has been achieved, it will remain dead letter. This is what has happened in the past. The Mexican Constitution was reformed in 1991 and included recognition of indigenous rights within Article 4. This reform was never applied because the deputies never got round to sorting out the regulations governing it. The same can be said of ILO Convention 169. Although Mexico was the second country to adhere to this international regulation, it was never taken on board in any serious way, neither by the executive nor (indeed far less) by the legislature. Some jurists have even insinuated that, indigenous rights being "unconstitutional", they could be taken to court and overturned.

This is the state of affairs following the Zapatista march: the climate remains very sensitive to the possibility of a scenario that will lead to dialogue and the signing of peace in the medium term. This is apparently a realistic expectation, the Zapatistas have repeated their desire and the need to achieve peace now. In this context, however, there remain doubts as to the future of indigenous rights once the Chiapas indigenous have returned to the "rule of law".

Notes

[1] Their position was publicly announced in an article published in *La Jornada* on 19th May 2000

[2] "Mestizo"- people of mixed (generally including a large proportion of Spanish) descent - trans. note

[3] The almost one hundred Zapatista prisoners throughout the country have been gradually freed; and by 2nd January 2001, 53 military posts had already been withdrawn from the state of Chiapas

[4] The Zapatista lack of agreement is expressed in the document "*Punto y seguido*" ("Full Stop")

GUATEMALA

The last century bore witness to many events in relation to the recognition of the world's, and particularly Guatemala's, indigenous peoples (*Campaña Continental de Resistencia Indígena, Negra y Popular* - the Continental Campaign for Indigenous, Black and Popular Resistance; Rigoberta Menchú's Nobel Peace Prize; the signing of the Agreement on Identity and Rights of Indigenous Peoples within the framework of the peace process; ratification of ILO Convention 169, etc.) These events helped to transform the Mayan movement into the true representatives of the Maya people. This transformation is currently going through a period of stagnation, or even reversal, which is due to a lack of coherence amongst the leaders, often because these leaders are not responding to the demands of the rural communities and are focussing their work in the city, through lack of a well-defined politico-ideological project.

Maya children, Guatemala Photo: Anette Molbech

Photo: IWGIA archive

The situation merits a deep and critical analysis at a number of different levels, taking into account the fact that the demands of the Maya bear no relation to the recent armed conflict but find their origins in the time of the Spanish invasion and colonisation.

In Terms of Politics

It must be remembered that a new government came to power in 2000. The Guatemalan Republican Front (FRG)[1] took office, nominating Alfonso Portillo as President, a contradictory person in both his discourse and his political leaning.

For the first time, the URNG (Guatemalan National Revolutionary Unity) participated in the electoral contest and, in alliance with other left wing groups, participates in the Congress with eight deputies, of which few now remain because the previous left-wing candidate, Alvaro Colom, who always had leanings to the Right, has now set up a new party known as the National Union for Hope (UNE), to which deputies from the old PAN[2] and the ANN[3] have defected.

It is important to emphasise that many indigenous leaders who had been involved in the different organisations of the social movement participated in the electoral process. Whilst it is clear that this is the first time a considerable number of Maya have gained access to Congress, albeit through the different parties and, in particular, the FRG instead of strengthening the process of the Mayan movement, the participation of some leaders in the political parties has brought it to a standstill as they have lost sight of the rationale of the organisations and have become mixed up in party political propaganda.

Currently, some Mayan groups are making efforts to form political parties. This is born out of the experience of some civic committees, for example, the case of Xelju'[4] in Quetzaltenango. Another example is the *Asociación Política de Mujeres Mayas* (Political Association of Mayan Women), including amongst others, Nobel Peace Prize winner Rigoberta Menchú; ex-deputies Rosalina Tuyúc and Manuela Alvarado; the Minister for Culture, Otilia Lux de Cotí, and the peasant leader, María Toj. The Association's main aim is to support the initiatives of any indigenous woman who is looking to become involved in politics.

It is clear that these political projects can be good but, unfortunately, they are creating the basis for personal ambition. This was the same system that was used by the Left and the Right to organise indigenous communities by creating certain figures who, instead of strengthening the movement have, at the end of the day, divided it.

In Terms of Economics

The process of globalisation promoted by the United States, Europe and Japan has caused the greater impoverishment of indigenous communities and the over-exploitation of Mayan families in rural areas, along with increasing levels of unemployment and underemployment in the towns. These are important factors when considering the standard of living and poverty.

The government - and often the NGO - concept of rural development results in infrastructural developments (bridges, roads, health centres, markets, etc.) but does not envisage a concept of integrated human development, which would imply a change in structure and attitudes and a new relationship between rural and urban areas.

In the peace process, an Agreement on Socio-Economic Aspects and the Agrarian Situation was signed. For many years, the URNG maintained its struggle for access to land as this was the focal point of indigenous community development. But, unfortunately, in the Agreement, whilst it clearly recognises the indigenous communities' philosophical concept of land, it does not propose the urgent restructuring of land tenure, by not providing for a new land registry. In other words, it does not touch upon the issue of agrarian reform.

The Land Fund was created and peasant organisations joined the National Coordinating Body of Peasant Organisations, CNOC[5]. The struggle for land has always been an unjust one for the peasants and, in this case, instead of resolving the problems the Land Fund has made them more complicated. One of the problems is that the government buys the farms from those who have made themselves rich on the communities' resources for many years. Another problem is that to have access to this land, the peasants have to buy it and, given their economic status, they are becoming ever poorer. Whilst it is clear that nowadays nothing comes free, selling land to its legitimate owners is not the right approach to providing peasants with resources.

As a consequence of this economic and social situation in the communities, increasing migration of indigenous and peasant families to the United States and Mexico can be observed and, in addition, the appearance of prostitution amongst indigenous women.

In Social Terms

Guatemala is a signatory to the Declaration on Discrimination against Women, has ratified ILO Convention 169 and has an Agreement on the Identity and Rights of Indigenous Peoples, signed during the peace process. But this does not mean that discrimination against indigenous peoples has decreased; this is a structural evil entrenched in the very heart of the State itself.

Whilst it is clear that there are a great number of women amongst the Mayan movement's leadership, they continue to be advised by men or it is the men who continue to make the decisions. In the communities, too, women are greatly disadvantaged in relation to men. The militarisation suffered by the indigenous communities increased the levels of sexism and gender differences. The concept of complementarity in life which, according to the Mayan world vision, is one of the principles of marriage between Maya, is now a Utopia, given that in recent years a high degree of family disintegration has taken place, along with all the problems a dislocated community suffers from (youth gangs, drug addiction and begging).

In Educational Terms

The Agreement on the Identity and Rights of Indigenous Peoples clearly speaks of an education in keeping with the pluricultural and multilingual reality of the country and the urgent need for Educational Reform is stated.

And so a Consultative Committee for Educational Reform was established within the Coordinating Body of Mayan Organisations of Guatemala (COPMAGUA)[6]. All civil society organisations and, particularly, the Mayan organisations, made a contribution, both the organisations of displaced people, united in the Consultative Assembly of Displaced People (ACPD)[7] and the large number of Mayan organisations (popular, development, academic, women's). The result was the Plan for Educational Reform.

The Portillo government has given this plan very little consideration. With the appointment of the Vice-Minister for Education, Dr. Demetrio Cojti, and the Minister for Culture, Otilia Lux - the former a member of the Consultative Committee for Educational Reform, the latter a member of the Commission for Historical Clarification, and both indigenous - many believed that Maya-related issues would be rapidly dealt with. On the contrary, they have stagnated and there has been very little progress in the area of education. The government has planned only palliative measures, such as the last Literacy Campaign, which created controversy in all sectors, as civil society was not consulted at all. For the Mayan organisations, it continues to be a project of Hispanicisation, as are all the programmes that have been promoted by the Ministry of Education. Nevertheless, some progress has been made in that some Mayan organisations have formed Mayan Schools, even though they are isolated initiatives. The Maya University is a Utopia, a dream and may be a means by which the State can clear the conscience of the many.

In Terms of Religion

In this area, there is a great development and strengthening of Mayan spirituality. Whilst Christian groups (Catholic and Protestant) have problems amongst themselves and are dividing communities at the same time as they are losing ground, Mayan spirituality is increasingly widening its scope. This way of viewing divinity and everything associated with it has enabled the Maya to recover their identity.

One of the problems is that, in their enthusiasm, it seems as if they may be falling into the same methodological trap used by Christian groups to gain followers. In other words, it is highly possible that they could become caught up in a Mayan fundamentalism and this could cause the role of spirituality to become distorted. Another problem is that some organisations have been using Mayan ceremony and priests as a means of getting their hands on financial resources.

In Summary

Whilst it is clear that it had been making good progress, the indigenous movement is now experiencing a period of stagnation or even backslide. This requires an analysis of the realities of the Mayan movement and its relationship with the Maya people. The movement also urgently requires a Strategic Plan to prevent further co-optation and the loss of leaders who have a great deal more to offer. Given these factors, the formation and strengthening of a Mayan intelligentsia is urgently needed. All that exists at the moment is a purely academic class, which is neither particularly creative nor proactive.

Notes

[1] The FRG was established by General Efrain Rios Mont, a general who has combined politics with Protestant fundamentalism. He is the current President of the Congress of the Republic, but was responsible for the large-scale massacres that took place during the armed conflict in Guatemala.

[2] PAN, the Plan for National Progress, is the party of the previous government. From this political group have appeared 'Unionists' and 'PANists'.

[3] The ANN, the New Nation Alliance, is the alliance of political parties headed by the URNG, DIA and UNID, which formed the Left in the previous elections.

[4] This is the oldest civic committee in Quetzaltenango. Its history began at the end of 1972.

[5] CNOC was formed of various peasant organisations fighting for land, including: the Committee for Peasant Unity (CUC), the Kabawil Peasant Council, the National Indigenous and Peasant Coordinating Body (CONIC), etc.

[6] COPMAGUA was, at the start, made up of the Council of Mayan Organisations of Guatemala (COMG), the Academy of Mayan Languages of Guatemala (ALMG), the Body for Mayan Unity and Consensus (IUCM), the Union of Maya Peoples of Guatemala (UPMAG) and the Tukum Umam Movement. Following an internal struggle, and due to personal ambition and inter-institutional problems, the first two organisations withdrew, leaving only the latter three, albeit accompanied by others.

[7] The ACPD, made up of the CERJ, CONAVIGUA, CPRs, GAM, CUC.

NICARAGUA

Conflicts over land ownership and the fight against exclusion were the topics that marked the geography and lives of the indigenous peoples and ethnic communities of Nicaragua's Caribbean Coast during the year 2000.

Although the right to land is widely recognised in the laws of the Republic of Nicaragua, there are no mechanisms for demarcating and titling land in favour of indigenous peoples or ethnic communities. The lesson learned in this region was that you can move forward in unity when the interests of the majority are combined.

Defence of Indigenous Territories

In October 1998, the Presidency of the Republic presented a draft Law of Demarcation, which was discussed with the different communities and territories in which the country's indigenous peoples and ethnic communities live.

The Autonomous Regional Councils – regional governments on the Caribbean coast – approved this draft legislative bill by means of a consultation process that was made possible through the combined efforts of men and women from the communities, their leaders, churches, universities, municipalities, Autonomous Regional Coun-

Miskito children, Alamikamba, RAAN. Photo: Diana Vinding

cils and national deputies, along with the financial and logistical support of governmental and non-governmental bodies.

After two years, on 6th September 2000, the Autonomous Regional Councils of the North and South Atlantic Autonomous Regions finally presented the new *Draft Law for a System of Communal Ownership on the part of the Indigenous Peoples and Ethnic Communities of the Atlantic Coast of the Rivers Bocay, Coco and Indio Maíz* to the National Assembly.

A Little Background

The demarcation and titling of lands has been one of the most fundamental and historic demands of the indigenous peoples and ethnic communities of Nicaragua's Caribbean Coast, and has remained an inescapable commitment throughout the different phases of State development. This was reflected in:

- The Treaty of Managua of 1860
- The Harrison-Altamirano Treaty of 1905
- The Titling Commission of the Mosquitia of 1905
- Agrarian Laws of 1963 and 1981
- The Political Constitution of 1986
- The Statute of Autonomy, approved in 1987
- The Constitutional Reform of 1995

Articles 5, 89, 107 and 180 establish clear recognition of the indigenous peoples' communal ownership of their territories. Article 89 clearly states, "The State particularly recognises the indigenous peoples' forms of communal ownership of lands in all that which concerns the right of ownership of their lands."

The submission of a *Draft Law for a System of Communal Ownership* responds to the need for a legal instrument that specifically governs the demarcation and titling of the lands of indigenous peoples and ethnic communities in order to ensure the effective application of their rights.

The Current Situation

Whilst some indigenous communities enjoy real and legally registered property titles, the majority of communities do not: they are recognised as the owners of their land but the boundaries have not been defined.

Various businessmen and companies voraciously exploit the fishing, mining and timber resources, along with the biodiversity, of these territories, most of them uninterested in resolving the issue of ownership of the indigenous territories.

Poor peasants from other regions of the country see new opportunities for survival in these "promising and underutilised" indigenous lands. The question people continually ask is why so few people claim so much territory?

We will now present some examples of how this conflict manifested itself in the year 2000. The examples are unresolved conflicts, such as the demand for a fair law to establish clear mechanisms by which to recognise the ancestral inheritance of the indigenous peoples over their lands and waters, vital elements for the preservation of their cultures, languages, religions and ways of life.

Prinzapolka: *Gringos* against Indigenous

The peaceful atmosphere of the plains lining the river Prinzapolka was lost because the inhabitants refused to allow four United States citizens linked to logging companies to strip them of the lands populated by the Miskito people.

Richard Clearence, Joseph Patten, Robert Burrinson and Paul Stauder Morales are four Americans who reopened a lawsuit against nine indigenous communities, accusing them of seizing property and falsifying legal documents in order to obtain more than 58,000 hectares of moist tropical lands in the areas along the river Prinzapolka in the North Atlantic Autonomous Region (RAAN).

This conflict, better known as the "Prinzapolka Case", has already been submitted twice to the courts in Puerto Cabezas and, on both occasions, the decision found in favour of the communities, who have lived on these lands for more than one hundred years.

However, the Americans' lawyer last year managed to get another judge to accept a new appeal, accompanied this time by criminal proceedings against the indigenous people, and the case has thus been reopened.

"I do not understand how someone who is not from this country has the right to say that the indigenous people are invading private land, when it is they who come here to buy the sacred communal lands of the indigenous, lands which the communities own through the Law of Autonomy. Nicaragua does not belong to the North Americans and this needs to be clearly stated," notes the Moravian priest Norman Bent, president of the Coastal Committee.

Bent says the Coastal Committee has spent several years working on the issue of communal property in the Atlantic Coast and that, in the Prinzapolka case, they have requested the government to cancel all tenancy agreements that may have been made between some communal organisations and the North Americans, as they were contracts signed by organisations that are no longer in existence.

According to experts, the properties in conflict were acquired by a North American citizen in 1909. With the passing of time, the lands were sold and inherited, which explains how the claimants now number four.

To lose 58,000 hectares of territory would mean the indigenous would be left without land on which to plant banana, cassava or *malanga*[1], without access to the river and its natural resources: in short, condemned to die from starvation.

The Prinzapolka Case was denounced in an international forum held in Geneva at the end of last year. A delegation of community leaders was able to participate, with funding from the Office of Humanitarian Promotion and Development of the Atlantic Coast (OPHDESCA).

Cayos Perlas: A Pending Dispute

Leaders from the communities of Laguna de Perlas, Corn Island, Bluefields and Rama Kay are still awaiting the decision of the Civil District Court of Bluefields with regard to a demand to nullify the sale of seven cays to a Greek, Peter Tsokos, who is now trying to resell – via the Internet – this area of communal territory.

The origin of the conflict dates back five years, when the Greek "bought" seven cays from the Hooker Jackson family for C$ 60,000. Several years previously, the Hooker Jackson family had acquired the cays in payment of a debt owed by the father of Amos Briton Archibold, the supposed owner of the cays.

However, in a document submitted at the end of October 2000, the communal and regional leaders stated, "Everything indicates that the Hooker Jackson family obtained the decision for forced sale without presenting the titles that proved Dr. Amos Briton Archibold's right of control over the islets or cays in question. As he was not the owner, he did not have the title deed. The forced sale was thus undertaken without proof of ownership and in serious violation of the law."

According to Tsokos, the transaction was perfectly legal. He "bought" seven of the 18 islets: Claw Cay, Baboon, While Kale, Waters, Vincent, Great Kay and Link Kay from the Kirkland, Taylor, Hooker and Jackson families, who had supposedly held the title deeds for more than a century.

But Tsokos' purchase contradicts article 10 of the Nicaraguan Political Constitution, which clearly states that territories such as the Cayos Perlas belong to the State.

Alejandro Mejía Gaitán, president of the Governing Board of the South Atlantic Autonomous Regional Council, says they are sure the Cayos Perlas belong to the community members from the Laguna de Perlas Basin, and so the regional authority fully supports them in their demand for return of the lands to those who historically owned them.

Members of the Autonomous Regional Council and leaders from the different indigenous communities requested that cancellation of the forced sale of the seven cays be declared because, "you can't sell someone else's property" and that the corresponding record of registration also be cancelled.

Monkey Point against the Giant CINN

The inhabitants of Monkey Point are standing firm in their struggle against the driving forces behind the Nicaraguan Interoceanic Canal

(CINN), who are attempting to build a port in their bay for freight handling.

On 3rd November 2000, the indigenous communities of Monkey Point and El Rama submitted an appeal on the grounds of unconstitutionality to the Supreme Court of Justice against construction of the dry canal and requested a hearing from the National Assembly in order to explain the reasons why construction of the port and the arrival of large ships would be damaging to the inhabitants and the environment.

The communities claim that the actions demanded and omissions noted in the appeal constitute violations of articles 5, 46, 89, 90, 91 and 180 of the Nicaraguan Political Constitution, which together guarantee the rights to ownership and use of their lands on the part of the indigenous and ethnic communities of the Atlantic Coast, as well as guaranteeing the right to the integrity and cultural survival of these peoples. The communities furthermore claim that the concessionary contract, as it is drawn up and negotiated with the Government of Nicaragua, also violates constitutional articles 60, 102, 128, 129, 177 and 181.

For the moment, approval of the draft bill known as the Contract of Concession for the Study of the Feasibility, Final Design, Construction and Operation of the Nicaraguan Interoceanic Canal Project (CINN) is still pending.

However, indigenous fears persist. They consider that the CINN infrastructure would divide and isolate the lands traditionally occupied by indigenous communities.

In May, the indigenous complaint reached the Inter-American Commission on Human Rights of the Organisation of American States (OAS). This organisation presented questions to the Government of Nicaragua, which has yet to reply.

The indigenous have the backing of a support group formed by the Coordinating Body of NGOs of the RAAS (South Atlantic Autonomous Region), the Alexander von Humboldt Centre and the International Legal Group for Human Rights.

Awas Tingni at the Inter-American Court of Human Rights

The Mayangna community of Awas Tingni, in the North Atlantic Autonomous Region, requested that the Inter-American Court of Human Rights oblige the Government of Nicaragua to demarcate and title their ancestral communal lands.

The Court and the Inter-American Commission are part of the Inter-American System for Human Rights Protection, created in order to watch over respect for human rights protected by the American Convention. The States, like Nicaragua, that are signatories to the Convention and members of the OAS, are bound by the jurisdiction of the Court, and so the decision in this case, expected during 2001, will be obligatory upon the Nicaraguan government.

The Mayangnas claim State protection and respect for their rights over the lands. With no consultation of the community, the Ministry for the Environment and Natural Resources (MARENA) handed over 62,000 hectares of forest for timber exploitation to the Korean company Sol del Caribe, S.A. (Solcarsa) in a thirty-year concession. In 1997, following the indigenous complaint, the Supreme Court of Justice declared the concession unconstitutional, for which reason it was cancelled in 1998. But the case was already in the hands of the Inter-American Commission's offices in Washington, D.C., which endeavoured, for more than two years, to get the Government of Nicaragua and the Awas Tingni community to reconcile their positions, with no success.

The Court continued with the case, holding a first hearing last November. During the in-depth hearing, the Mayangna community of Awas Tingni presented to the Inter-American Court more than a decade of statements from traditional communal authorities, witnesses and experts of the stature of Dr. Galio Gurdián, Dr. Lottie Cunningham, Dr. Charles Hale, Dr. Roque Roldán and Dr. Rodolfo Stavenhagen.

The decision regarding the case of the Mayangna community of Awas Tingni will create a very important precedent, not only at national level for all the indigenous peoples of the Atlantic Coast of Nicaragua (Mískitos, Ramas and Mayangnas or Sumus), but also for the international community, because Awas Tingni is demanding that the Government of Nicaragua recognises its rights over its communal lands in practice, that it ceases to grant concessions over natural resources on its communal lands and that it pays reparations for the economic and moral damage suffered by the Community because of the government actions and omission regarding their property rights.

Future Prospects

Even though the Draft Law was presented more than six months ago, it has still not been approved, in spite of the fact that the main conflicts facing indigenous peoples and ethnic communities are closely linked to the problem of ownership of their lands.

In the final stages of 2000, it was difficult to negotiate the discussion and approval of the Draft Law because the national political scene was focussed on municipal elections. This year the situation will change little: there are further national elections, this time for the presidency and the National Assembly. Discussions focus more on the "worthiness" of the candidates than government programmes, and when plans are discussed, there is no mention of indigenous peoples or ethnic communities.

In the area of the BOSAWAS Biosphere Reserve, the indigenous Mískitos and Mayangnas are undertaking their own process of self-demarcation and recently entered into an agreement for gradual implementation with the Nicaraguan Institute for Territorial Studies (INETER). These could form models for other territories. While we await the law, other voices demand recognition of historical agreements whose validity has not expired.

Note

[1] "Malanga" - a tuber not dissimilar to sweet potato - trans. note.

COSTA RICA

In Costa Rica, 39,264 indigenous people live over 23 territories[1], the total area of which amounts to 324,829.29 hectares. We are eight clearly established indigenous peoples: the Bruncas, Bribris, Cabécares, Guaymies, Malekus, Huetares, Chorotegas and Teribes.

Despite the fact that we form only one per cent of the Costa Rican population (totalling 3.8 million), important achievements have been gained. Nonetheless, these have been due more to the individual efforts of peoples and communities through their own organisations than to State policies.

Relations between the State and Indigenous Peoples[2]

The indigenous populations lack a State coordinating body to direct and technically guide common lines of public sector action towards indigenous populations.

The National Commission for Indigenous Affairs (CONAI) - a government organisation - has not fulfilled the overriding objective behind its creation, which was to serve as a coordinator of programme strategies and to defend the interests of the indigenous communities. More serious still, this body has become a mechanism of political power that divides the indigenous populations, a situation which can clearly be seen in virtually all of the country's indigenous communities, often ignoring the direct demands of indigenous inhabitants.

This has meant that it has been necessary to turn directly to the different Associations, Neighbourhood Committees, Women's Committees and Civil Organisations in order to find out indigenous needs, opinions and resolutions within the national life of the country.

The absence of control and a hierarchical vacuum have meant that this institution's behaviour has been the subject of criticism and complaint from indigenous inhabitants, within an environment of civil denial on the part of the communities themselves.

National Plan for Indigenous Development

During the year 2000, indigenous community members came to an agreement as to their own National Plan for Indigenous Development, aimed at providing a general outline with regard to the who, how, where and when of development programme implementation in the native communities. However, alongside this initiative, the Costa Rican State undertook a similar exercise, through the Rural Development Programme, producing another "Governmental Plan" as a result, and allocating it resources of a little over US$ 100 million. The government exploited the date of 12th October 2000 to publicise its "plan" and to calm indigenous voices. As you can imagine, allocation of the financial budget has been a farce; the plan has received not one penny and, what is more, it has undermined the whole negotiation process that indigenous organisations were entering into with different donors.

Meanwhile, the indigenous communities suffer ever-increasing poverty.

Environment

In January 2000, indigenous communities and environmental groups submitted an appeal on the grounds of unconstitutionality against the oil exploration concessions granted by means of resolution R-702-

The indigenous territory of Rey Curré and the future location of the Boruca Dam. Photo: CEDIN

98 of the Ministry for the Environment and Energy (MINAE) to the MKJ XPLORATION INC company, given that "no popular consultation process aimed at the communities of the Caribbean coast of Costa Rica, who will clearly be affected by these activities, has taken place".

In the appeal, they demanded respect for the commitments made in international agreements and pacts, particularly in relation to respect for and consultation of indigenous communities. Although the explorations were initially halted, they were allowed to resume some time later, provided they were not within indigenous territories.

Since June 2000, in the southern region of the country, concretely in the Rey Curré indigenous territory, a group of indigenous women have taken the decision to openly confront progress of the Boruca Hydroelectric Project, a megaproject promoted by the Costa Rican Electricity Institute (ICE) at a cost of around US$3,000 million. This project would completely flood their territory, partially flood those of Boruca and Térraba and indirectly affect three more, as it would form a lake of around 250 square kilometres.

Whilst the preliminary construction works continue, the dialogue between the community and the Project's Executive Board has broken down since 18th January 2001. However, the awareness generated in different sectors of society and environmental organisations would seem to presage an intense struggle of opposition, in which fulfilment of existing indigenous legislation will prevail (Indigenous Law 7172, Convention 169 and Law 7316, amongst others).

Complementary to this issue, constant requests have been made to the Agricultural Development Institute (IDA) to transfer the territorial rights to Rey Curré, Boruca and Térraba to their legally representative organisations. Strategically, the IDA does not want to grant them this right, as it would give these peoples greater tools in their struggle against the Hydroelectric Project.

Indigenous Women

As in many of the world's countries, indigenous women suffer from double discrimination: firstly, because they are women and, secondly, because they are indigenous.

In the short-term, a more active and broad participation on the part of indigenous women can be detected neither in their self-development nor within the mechanisms of the national movement. The opening-up of the organisations towards involving women in their membership or governing bodies is due more to the demands of international donors than to a conviction or change in attitude amongst the men.

The isolated efforts made by some women's groups, primarily in the Caribbean and the southern part of the country, are very valid and must be recognised for what they are for they demonstrate, on a small-scale, the contribution that can be made to national indigenous development. They are sowing seeds which, in the longer term, when they germinate and their branches link with the seeds sown on the other side of the Andes, will be a force capable of giving the change of direction necessary to eliminate the dependence, paternalism and, above all, conformity in which a large part of our peoples are submerged and that we will advance towards the development with identity of our indigenous peoples.

Conclusion

It cannot be concluded that, in recent years, indigenous peoples have gained significant achievements of benefit to the majority.

In spite of this, if we analyse the initiatives at regional and local level within the country, we find that the statement at the beginning of this article is nevertheless true: the communities have gained achievements, which have objectively verifiable indicators, through the individual efforts of their grassroots organisations, building from small bridges to schools, from small subsistence projects to self-sufficient marketing centres, from traditional agricultural projects to banana crops capable of supplying 75% of the national market, all generating change in the development of their respective communities.

If we add together all of these "isolated advances", we can conclude that the Costa Rican indigenous movement has made really surprising achievements. These have been obtained through a far more direct relationship between the local organisations and international donors and, to a lesser extent, through the interinstitutional relations with regional and sub-regional governmental offices, some - not all - of which have made efforts to cooperate with indigenous development. Nonetheless, due to the fact that this is not in line with government policy, their secretive efforts are few.

In response to great threats such as the Hydroelectric Project, the Governmental Development Plan and other initiatives during the first months of 2001, indigenous people are entering a period of turmoil that predicts gratifying results for them.

Although the Costa Rican indigenous movement as a whole has not shown perseverance in its actions, it is clear that the maturity of its grassroots organisations is making people understand the urgent need for consolidation and strengthening of national structures that are capable of maintaining a line of negotiation, of vigilance, of pressure and of constant struggle that will prove to the State and society in general the unity of our movement.

Talking with an indigenous friend of mine recently, we were analysing the current state of the indigenous movement, where the majority of organisations are born, grow and self-destruct with surprising speed, endangering both external and internal cooperation. He told me, "In reality, I believe it is the indigenous leaders who have fallen and disappeared and that the true indigenous movement, which involves the participation of the vast majority, has only just begun."

After some reflection, I think he is completely right.

Notes

[1] One of these, Altos de San Antonio - of Guaymí origin -, has not been legally established.

[2] Transcript of the Ombudsman's Report for the Year 2000, in its chapter on indigenous peoples, where it coincides with the majority perceptions of the native communities.

PANAMA

General Considerations

The indigenous peoples of Panama commenced the new millennium burdened by problems, frequently frustrated by electoral troubles but, in general terms, also active in their demands. Not only are they negotiating with the government's Executive but also with the Legislative Assembly, where laws are made at a national level and where the Commission for Indigenous Affairs is playing a remarkable role.

So far, five (5) indigenous territories have been legally recognised (Kuna Yala, Emberá Waunan, Kuna de Madungandi, Ngobe-Buglé Comarcas[1] and, as of June 2000, Kuna de Wargandi Comarca). This has led to other peoples who still do not enjoy this legality also demanding their recognition. Amongst these communities are the Kuna who live on the borders with Colombia (Pucuro and Paya or the Takargunyala Comarca), and the Nasos and the Bri-Bris on the borders with Costa Rica.

The creation of the National Council for Indigenous Development in January 2000 (CNDI, see **Panama** in *The Indigenous World 1999-2000*), attached to the Presidency of the Republic, gave rise to considerable expectations but, at the moment of being sworn in, it came as a great shock to the indigenous leadership that political elements from the ruling party were appointed to head this council although they had very little or nothing to do with the communities in question. A year on from its formation, it has not yet managed to meet because it comprises ministers and senior staff from autonomous institutions and universities who have shown no interest in sending their representatives. Meanwhile, indigenous affairs continue to be dealt with traditionally by the Ministry of the Interior and Justice, although this time in closer collaboration with the traditional authorities.

Another of the discussions of greatest impact has been the implementation of environmental projects or policies in different indigenous regions of the country, projects that come largely from the Inter-American Development Bank (IDB) and the World Bank. Most of these projects are aimed at the Darién forest, which is a small extension of the Amazon ecosystem within Panama.

Colombia's Internal Problem Overflows

This area of Darién is currently also falling prey to the expansion of neighbouring Colombia's internal problems. Incursions on the part of all the armed forces from this neighbouring country - military,

Kuna man, Panama. Photo: Andrew Young

paramilitary, guerrillas - are becoming a regular occurrence and the Darién forests have become an area of terror for the Emberás and Kunas who live there, as well as for the black population.

Previously, Panamanian life was respected but, over the last year, the situation has taken a different turn, and so the Panamanian police force itself has had to patrol the zone. Because of this increased militarisation, there have been reprisals on the part of the Colombians, and this is causing the mass flight of indigenous communities to other parts of Panama, particularly the capital, hence creating further social problems.

This problem reached its climax when an incursion on the part of one of the unlawful forces led to the murder of a young Emberá girl at the beginning of October 2000.

In the case of Kuna Yala, since the worsening of the situation in Colombia, a new military centre has been established within the Armila community and more than 100 young Kuna have been recruited to police the border under the military orders of the National Panamanian Police.

The General Kuna Headman, Carlos Inakelikinya López, Dies

On the 7th of August 2000, at 87 years of age, one of the most remarkable spiritual guides, a leader, historian and interpreter of Bab Igala (God) from the Kuna Yala Comarca, Carlos Inakelikinya López, passed away. He was also General Headman of the General Kuna Congress. López was the only living pupil of the great leaders and spiritual guides of Kuna Yala. He was also the only surviving eye witness of the Kuna Revolution of 1925. In 1997, he published the book *"Así lo vi, así me lo contaron"*, (What I saw, what I was told) a systematic evaluation of the bloody events that took place at that time.

Tabasará 2 Hydroelectric Project Suspended

One of the most controversial discussions to take place at national level related to the construction of large-scale hydroelectric plants on indigenous territories, particularly in the Ngobe-Buglé Comarca, on the river Tabasará, in the provinces of Veraguas and Chiriquí. The project consisted of two hydroelectric plants at a cost of US$105 million. The work anticipated the flooding of at least 500 hectares of land and would, in addition, have affected more than 5,000 indigenous people.

Mobilisations and road blockades took place throughout the year, demonstrating the great organisational power of the Ngobe-Buglé people in defence of their territory. Action was undertaken not only by the indigenous population but also by peasants from the area, and the country's social organisations also joined in. The support afforded by the Panamanian Ombudsman was very important, as was that of the Commission for Indigenous Affairs of the Legislative Assembly.

Given the lack of State response regarding where the more than 5,000 indigenous people forced to abandon their lands because of Tabasará 1 and 2 were to be moved to, the ex-President of the Ngobe-Buglé General Congress and natural indigenous leader, Alberto Montezuma, ensured they continued to oppose both initiatives, against which they would fight "to the bitter end".

At the beginning of December 2000, the Vice-Minister of Interior and Justice, Rodolfo Aguilera Franceschi, made known that, by means of a decision of the Supreme Court of Justice, the Tabasará 2 hydroelectric project had been suspended. Aguilera explained that the peasants and indigenous people had submitted a complaint regarding the environmental impact study, and the appeal had gone as far as the Supreme Court of Justice, which decided to reject the study and, finally, suspend the work.

New Legislation

During the year 2000, various laws in favour of the indigenous peoples of Panama were approved:

Law No. 20 of 26th June 2000 is a ***sui generis*** law on national and regional intellectual property, which provides new stipulations such as the creation of a Department for Collective Rights and Folkloric Expression (Art.7); the creation of a post known as the Examiner on Collective Indigenous Rights (Art.9), who is to protect the intellectual property and other traditional rights of indigenous peoples. And, lastly, as a new innovation, Article 25 establishes that, "For the purposes of the protection, use and marketing of the collective intellectual property rights of indigenous peoples contained in this Law, indigenous artistic and traditional expressions from other countries will benefit from the same stipulations established within it, provided they are undertaken by means of reciprocal international agreements with those countries." This is best described as a right of reciprocity with the other indigenous peoples of Abya Yala.

Through *Law No. 34 of 25th June 2000,* the Kuna Comarca of Wargandi was created. After several years of struggle on the part of this Kuna community, which lives right in the heart of the inhospitable Darien forests, it has seen its dream of having a separate geographical area comprising the districts of Chepigana and Pinogana, in the Province of Darién, covering an area of 77,500 hectares, come true.

In articles 3 and 6, the Law recognises the General Congress - as the highest traditional authority - and the local congresses. The General Congress and the traditional authorities will have the primary role of strengthening, developing, conserving and protecting Kuna culture, along with the traditions, language, unity and integrity of the inhabitants and natural resources of the Comarca, with the aim of promoting their social and economic development. Article 16 recognises the *Ibeorgun* religion as the main religion of the Wargandi Kuna. The Organic Charter of the Comarca will govern its promotion and dissemination.

Law No. 35, of 25th July 2000 provides for the creation of a Governing Board for Fairs for the Indigenous Peoples of the Republic of Panama, a body with legal status, its own assets, and administrative autonomy. The purpose of the Board will be to organise and hold national and international agro-forestry, handicraft and cultural fairs and exhibitions with the aim of promoting the national and cultural wealth of the indigenous peoples of Panama (Art.2).

Participation of Indigenous Women

Participation on the part of indigenous women in Panama has been much more active than in previous years and has taken place at all levels: economic, social, political and cultural. Many leaders are young, indigenous women and even professionals who have graduated from university. This has meant that some indigenous women are leading indigenous congresses, as in the case of the Emberás, and some are involved as leaders at community level, such as has taken place amongst the Kuna. The economic deterioration over recent years has meant that indigenous women have taken the reins of the household economy, as in the case of Kuna women who, through the sale of *mola* or blouses as art and handicrafts, have made this one of the most stable economies for their households. The same is occurring amongst other indigenous peoples, such as the Emberás and Ngobes. Significant cooperatives of indigenous women, and other organisations, have been created with this aim.

Indigenous women took part in all the mobilisations that occurred at national level to defend the rights of their communities, and their presence is very encouraging because the strength of indigenous women has meant that some processes were speeded up, such as the halting of the Tabasará 2 Hydroelectric Project.

At international level, this year saw the greatest participation yet on the part of the indigenous women of Panama. They attended virtually every international forum organised by the United Nations, by other regional organisations or by the indigenous peoples themselves.

Note and sources

[1] "Comarca" roughly translates as an administrative region (Trln.)

La Prensa, Panama 9th August 2000.
La Prensa, Panama 8th December 2000.
López, Atencio: "María Mecha y el Plan Colombia"
Official Gazette No.24 083, 27th June 2000 and No. 24 106, 28th July 2000.
Interview with Florina López, Person in Charge of the Women's Workshop *"Kikadiryai"* and leader of the Asociación Napguana.

SOUTH AMERICA

BEST COPY AVAILABLE

SOUTH AMERICA

VENEZUELA

Constitutional Advances and Political Participation

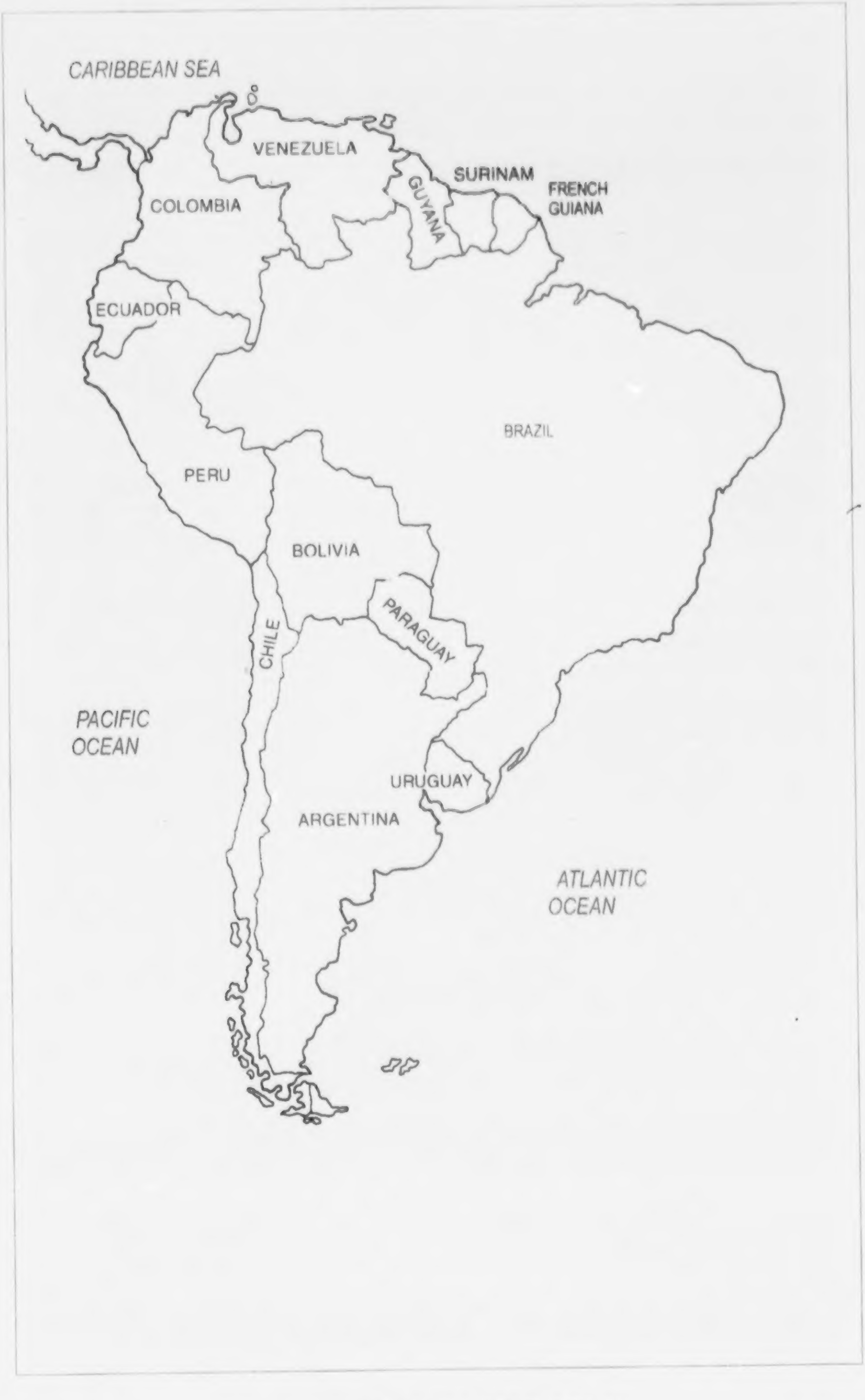
With the approval of the new Constitution of the Bolivarian Republic of Venezuela at the end of 1999, indigenous peoples achieved fairly broad recognition of their specific rights, making the Venezuelan Constitution one of the most advanced in Latin America in terms of indigenous rights (see **Venezuela** in *The Indigenous World 1999-2000)*.

In this context, during the first half of the year 2000 and, in the face of an election ordered by the National Constituent Assembly, national and regional level indigenous peoples and organisations devoted themselves to designing a strategy that would enable them to access - as an indigenous movement - these important spaces for political participation and decision-making within the dynamic of the Venezuelan State.

The indigenous organisations from each of the 10 states that have indigenous populations (Zulia, Amazonas, Bolívar, Delta Amacuro, Anzoátegui, Sucre, Monagas, Mérida, Apure and Trujillo) held local and regional Community Assemblies in order to appoint, in a participatory and democratic manner and according to custom and tradition, the candidates for each level of popular representation. This process of selection of candidates to legislative, municipal and government bodies enabled an important political growth and maturity on the part of the indigenous movement in its struggle to capture space for political participation.

When the elections were held on 30th July 2000, the National Indian Council of Venezuela (CONIVE) won the three positions of deputy to the National Assembly established by the Constitution: Noelí Pocaterra (Wayuú) for the western region; Guillermo Guevara (Jivi) for the southern region and José Luis González (Pemón) for the eastern region. Similarly, the Regional Organisation of Indigenous Peoples of the Amazon (ORPIA), the Regional Organisation of Indigenous Peoples of Zulia (ORPIZ), the Pumé de Apure Organisation and the Kariña from Sucre and Anzoátegui won deputy posts to the Legislative Councils plus posts of councillors in their respective

BEST COPY AVAILABLE


CARIBBEAN SEA
VENEZUELA
SURINAM
FRENCH GUIANA
GUYANA
COLOMBIA
ECUADOR
BRAZIL
PERU
BOLIVIA
PARAGUAY
CHILE
PACIFIC OCEAN
URUGUAY
ARGENTINA
ATLANTIC OCEAN

BEST COPY AVAILABLE

states. At the level of executive power, the political indigenous movement *"Pueblo Unido Multiétnico de Amazonas"* (United Multi-Ethnic People of the Amazon - PUAMA) gained control of the Government of the State of Amazonas, with the first indigenous Governor in Venezuela, Liborio Guaruya (Baniba) and three Town Halls in the Municipalities of Manapiare, Autana and Río Negro within the same state.

The success was such that, during the period covered by this report and on the basis of the rights recognised by the new Constitution, organised indigenous peoples managed to capture important spaces within the Venezuelan State political structures and this will enable significant progress in the area of indigenous rights over the coming years.

Approval of Favourable Legislation

Once the elections of 30th July had been held, the National Assembly was established and the three indigenous representatives managed to get a Permanent Commission for Indigenous Peoples created. This commission formulated a legislative agenda for the year 2000, which prioritised a Draft Law for the Demarcation of Indigenous Lands, drawn up with the participation of regional and national indigenous organisations, and also discussions on Convention 169 of the International Labour Organisation (ILO).

On 21st December 2000, after extensive discussions, the Law of Demarcation and Guarantee of the Habitat and Lands of Indigenous Peoples was approved and ILO Convention 169 was ratified.

The Law of Demarcation "has the aim of regulating the formulation, coordination and implementation of policies and plans relating to the demarcation of the habitat and lands of the indigenous peoples and communities in order to guarantee the right of collective ownership of their lands..." (Art. 1) and defines the indigenous habitat as "all of the space occupied and used by indigenous peoples and communities, and in which they undertake their physical, cultural, spiritual, social, economic and political life; this comprises the areas of cultivation, hunting, river and sea fishing, gathering, pasturing, settlement, traditional paths, river channels and routes, sacred and historic sites and any other areas necessary to guarantee and develop their specific ways of life." (Art. 2)

The national process of demarcation will be planned, implemented and coordinated by the Ministry for the Environment together with the indigenous peoples, communities and organisations and the National Commission for Demarcation of the Habitat and Lands of the Indigenous Peoples, appointed by the President of the Republic.

In the face of approval of this law, the different national sectors opposed to recognising the rights of indigenous peoples reacted by indicating - through the media - that approval of the Law of Demarcation was a threat to the territorial integrity of the Venezuelan nation. In this regard, the following was stated in a prestigious daily national newspaper:

> *"... we have warned of the dangers to Venezuelan territorial unity when theories and practices are promoted which - although the claims may be fair - as far as Venezuela is concerned relate to less than one per cent of the population...it is becoming ever more visible on the American continent, where indigenous movements have been increasingly consolidating their power, to the point of having formed alliances with other groups - as occurred in Ecuador at the beginning of 2000 - in order to demand and obtain governmental changes that are not shared with other broader sectors of society."* [1]

The Situation of Indigenous Peoples in Venezuela

In spite of the Constitution's broad recognition of indigenous rights and the notable progress made in the legislative sphere, the situation of the country's indigenous peoples continues to be truly critical, particularly in relation to land rights and the progressive deterioration in the health status of the communities. In fact, the serious problems caused by invasions of indigenous lands and their occupation for State development projects have continued, without effective measures being taken to resolve those problems.

Continuation of the Electric Power Line towards Brazil through the Lands of the Pemón People

During the year 2000, many Pemón communities of the Gran Sabana continued to protest against and denounce the occupation of their lands, the environmental damage and the secondary effects caused by the Venezuelan government's construction of the electricity power line towards Brazil, particularly its use for mining activity. As noted in the public statement made by representatives of National Social and Ecological Unity, the link between the electrical interconnection system in the south east and the mining development scheme proposed for Bolívar State is difficult to conceal, in spite of the Ministry for the Environment's statements to the contrary when attempting to defend the project in question.

The National Executive made considerable effort to come to an overall agreement with the Pemón communities, including direct talks between the communities, the President of the Republic, Hugo Chávez Frías, and the Vice-President of the Republic, Isaías Rodríguez. Nevertheless, the communities were divided. Whilst a good number of the communities accepted the agreement, which included (amongst other things) an obligation on the part of the National Government to proceed with the demarcation of their habitat and lands in the Gran Sabana and the creation of a fund aimed at the economic development of the region's communities, some communities declared that accepting the proposal violated indigenous custom itself, as the decision should have been taken by consensus.

In May 2000, these latter communities submitted an appeal on the grounds of unconstitutionality to the Supreme Court of Justice, in which they declared the unconstitutionality of the electric power line and requested a definitive halt to the work on the line because it affected their traditional way of life and the lands they had ancestrally inhabited.

The appeal was declared unfounded by the Supreme Court of Justice on 16th November 2000. Nevertheless, the decision rules that the Ministry for the Environment and Natural Resources should, with support from the Ombudsman and representatives of the indigenous communities, immediately design and implement a Plan aimed at checking and guaranteeing due fulfilment of the mitigation measures and conditions provided for in the administrative authorisations granted to the company *Electrificación del Caroní* (EDELCA) for occupation of the territory and the allocation of renewable natural resources for the purposes of construction of the electrical power line.

Following the decision, the Pemón communities opposed to the power line have continued their protest actions and have paralysed the work on various occasions by bringing down a number of the pylons that cross their communities.

Scientific Research in Indigenous Areas

In April 2000, the Piaroa indigenous communities of Manapiare in the State of Amazonas complained that the National Parks Institute had granted authorisation to representatives of the Venezuelan Scientific Research Institute (IVIC) and other foundations to carry out research into genetic resources in the Cerro Yutajé, Yavi, Corocoro, Guanay, Camani and Morrocoy natural monuments, which form the sacred places of the Piaroa people and are located within their territory.

This authorisation was granted without consulting the indigenous peoples and communities living in the area, as required by the Constitution of the Republic, and was undertaken within the framework of an access contract to the genetic resources granted to the IVIC on the part of the Ministry for the Environment and Natural Resources. This contract also granted the IVIC rights over the use and exploitation of those genetic resources. The complaint made by the communities and the Regional Organisation of the Indigenous Peoples of Amazonas (ORPIA) was dealt with by the Ministry for the Environment and the National Parks Institute and, following heated debate at national level on the issue of scientific research on indigenous lands, the permit granted by the National Parks Institute was repealed.

Along the same lines, during the year 2000 a series of complaints were made regarding scientific research undertaken during the 1960s in the area of Alto Orinoco (Amazonas State) amongst the indigenous Yanomami. In fact, following publication of the book *Darkness in El Dorado* by the North American journalist, Patrick Tierney, a great deal of controversy was centered around the issue of research in the area, as this book set out to prove that some North American scientists, in association with the United States Atomic Energy Commission, had used the Yanomami as a control group for the atom bomb, by introducing radioactive isotopes and using a vaccine against measles that led to the death of a considerable number of people in this ethnic group. The complaints in this case were taken to the Vice-President of the Republic and the Permanent Commission for Indigenous Peoples of the National Assembly, where investigations were initiated. However, these investigations have not yet reached their conclusion.

Coal Exploitation in Yukpa and Barí Lands in the Perijá Mountains

The mining concessions granted to public and private companies by the Ministry for Energy and Mines in the Perijá Mountains (Zulia State), traditional lands of the Yukpa and Barí, continue to affect the lives of these indigenous peoples. Faced with the granting of new concessions, the indigenous peoples submitted an appeal on the grounds of unconstitutionality in which they demanded that the Ministry for Energy and Mines should halt the process of granting concessions in this area that is under special administration. Nevertheless, this appeal was declared unfounded by the Supreme Court of Justice, on the grounds that a demand of such importance could not be granted by means of a brief and summary process such as this.

The Health Status of Indigenous Peoples

Despite the fact that the Constitution establishes the right of indigenous peoples to integral health care that takes into consideration their practices, cultures and traditional medicine, the health status of several indigenous peoples continues to be truly critical. During the year 2000, outbreaks of cholera and tuberculosis have drastically affected the Warao people (Delta Amacuro and Sucre States) and the Kariña (Sucre State), where many deaths, particularly amongst the infant population, were caused by these and other illnesses. In the State of Zulia, outbreaks of cholera and dengue fever have seriously affected the Wayuú people. In addition, an increase in malaria in the states of Bolívar and Amazonas seriously affected many indigenous communities. With regard to the Yanomami, at the end of the year 2000, in the State of Amazonas, serious complaints were made about the increase in infant mortality, brought about largely by complications in respiratory illnesses, malaria and hepatitis B, which have become endemic diseases. In all these cases, the care provided by the Venezuelan State is remarkable in its insufficiency, to the extent that in some areas services are not provided at all or only intermittently, preventing effective measures from being taken to control the serious public health situation that many indigenous peoples find themselves in.

Reference

[1] **Adolfo P. Salgueiro**:. *El Universal* daily newspaper: 27th January 2001.

COLOMBIA

The 1991 Constitution and Indigenous Peoples

For indigenous people, the 1991 Political Constitution was unprecedented in the history of Colombia, as it enshrined our fundamental rights at constitutional level. It offered us the prospect, 500 years after the Conquest, of transforming a violent and oppressive encounter into a new and fertile one. We looked optimistically to the future.

Ten years on, there is no reason left to maintain this optimism. In part because, in spite of all the constitutional articles referring to respect for ethnic and cultural differences, the Colombian State has not identified itself with a willingness to revise its project of exclusivity. And, in part because, whilst the State opened its doors to indigenous peoples, the government of the time closed them in the economic sphere, which is a determining factor in well-being and in overcoming the conditions of opprobrium and marginalisation that indigenous peoples have experienced. It was thus a constitutional opening but not an economic one. What the Gaviria government called "economic opening" was aimed at the outside world, largely to attract capital that could be linked to the exploitation of mineral and energy resources.

Today, the structural problems of the Colombian economy and society continue to be the same. What is more, they have worsened: the social inequalities have grown and violence against indigenous peoples, against peasants, workers and afro-Colombians takes more victims than ever. Over the last decade, approximately 300,000 people have died a violent death in Colombia and more than one and a half million peasants have been displaced from their lands. These figures are comparable only to countries at war. Ten years after the new constitution came into effect, the rights of Colombians, even the most fundamental ones, now have no more than programmatic value and form part of a Utopia, awaiting better times in which to be achieved.

Indigenous participation in the National Constituent Assembly with their spiritual and ideological proposals, however, brought about positive change in Colombian society, as the behaviour and spirituality of indigenous peoples are now viewed with respect and admiration. Their systems of organisation, production, distribution, reproduction, their ways of applying knowledge and their ways of understanding development, offer alternatives in economic, social and technological terms and represent a broadening of Humanity.

Indigenous concerns regarding the destruction of ecosystems and living spaces have also been determinant in the emergence of protectionist and preservationist ideas, and in the formation of movements and schools seeking new conditions for economic development that guarantee a coexistence with nature.

Breaking down Indigenous Economies and Organisations

But these ideas have not been echoed by the Colombian State. Despite the fact that the *ethnic and cultural diversity* of the Colombian nation is considered to be an asset (in addition to being constitutionally protected), the State tolerates (when it is not actually promoting) local, regional and national development plans that break down the economies and organisations of the indigenous peoples. The necessary autonomy required by the indigenous peoples for their economic and social development remains empty of content when the State implements a political vision that views the Colombian nation as one huge market, in which economic sectors compete freely.

In open contradiction to the National Constitution, which envisages a territorial reorganisation of the Colombian nation in which historical, geographical, environmental, ecological, cultural and ethnic criteria should prevail, the Colombian State is undertaking a different territorial reorganisation using current national, departmental and municipal investments, focussed on extractive, agro-industrial, hydro-electric and infrastructural macro-projects. These investments, many of which are linked to multinational companies, are changing local organisation, transforming the regional economic dynamic and altering the territoriality of the indigenous peoples.

In the political sphere, the State tolerates no dissent from the population in relation to these economic policies. Social protest and mobilisation on the part of the social sectors affected are highlighted as attempts to destabilise the country and erode the rule of law on the part of guerrilla forces. It is this attitude on the part of the State that has led to the emergence of paramilitary units which, in recent years, and precisely in those regions where economic macro-projects are underway or envisaged, have carried out military actions against the population, with the previously mentioned results.

The Problem of the Pacific in the Context of Colombian Society

Around 100,000 indigenous people belonging to the *Tule, Embera, Katío, Chamí, Eperara-Siapidaara, Wounaan* and *Awa*[1] peoples live in the Colombian Pacific. We have different languages, customs and beliefs but we are united by the forest and by the lush and generous natural environment, which provides us with food, shelter and clothing. We also share a history of denial and struggle to preserve our territories, cultures and the right to live according to our traditions, to choose forms of government in accordance with our needs and to decide our future autonomously.

We have lived side by side in these forests with Black populations, brought from Africa to work in the mines. We share with them the desire for freedom and independence and we mutually recognise our differences. This afro-Colombian population, today close to 80% of the population of this region, arrived on our lands fleeing slavery and adopted many traditional practices from us in terms of the use and management of nature.

Embera handicraft production. Photo: Alberto Achito

Embera village. Photo: Alberto Achito

BEST COPY AVAILABLE

This region, paradoxically called "the Pacific" is, in reality, the epicentre of much violence. In percentage terms, it is the region with the most displaced people and the most violent deaths. And it is also one of the most neglected regions of the country. For the State and its economic model, we indigenous do not exist, for our lands are not for sale and our production does not obey mercantilist demands but is aimed primarily at satisfying our needs. For this reason, we are a useless figure in the country's Gross Domestic Product and a blank box in the State's accounts. But the official accounts do not put a value on forest conservation or protection of nature, for the biogeographical Pacific is one of the areas of most biodiversity on the planet.

The problems Colombia is experiencing contribute to nurturing and reproducing the crisis that we indigenous of the Pacific are suffering. This is related to:

A crisis in State legitimacy and the deinstitutionalisation of the Nation

In Colombia, there is a long tradition of disobedience towards State laws. And there are good reasons for this for, in the past, they permitted the legitimate appropriation of collective goods and wealth for private use. But this disobedience towards a State, *to the service of privileged private interests,* has been overwhelming in recent decades: tax evasion, smuggling, illegal land possessions, the plundering of public funds, the private appropriation of the Nation's wealth, fraudulent elections, vote buying, kidnapping and, last but by no means least, drugs trafficking, with all the consequences of corruption, violence and destabilisation this brings with it, have all ended up deinstitutionalising the country.

Clientilism, the crisis in political representation and the establishment of force and intimidation to guarantee partisan loyalties

All these factors have undermined the legal code and the application of justice in law, the monopoly of which should fall under the sole responsibility of the State. As the State has been rolled back in the area of justice, the social spectre of those who assume the legal authority to impose and apply their own law, by means of action, has grown. This *Supplantation of law by the rule of violence and power of force* has contributed to a loss of civic harmony. At the moment, violence is the issue that attracts the most attention on the part of Colombians. And this is inevitable, as the armed conflict in Colombia has entered a process of humanitarian degradation the likes of which has never before been seen in this country. Over the last decade, the yearly average number of deaths by violent means has been 32,000 people, making it the number one cause of death in the country.

With the escalation of the war, women have been forced to take on new social roles, as displaced widows or mothers who have to safeguard the sustenance and survival of their families and, on many occasions, the unity and permanence of their communities. Due to the fact that they are women in a male-dominated environment that undervalues women's political capacities, they are not subject to the same pressure and intimidation from the armed actors in the conflict. Nevertheless, the emotional impact of the assassination or disappearance of their children, husbands or close relatives is immense. This is an issue of great concern in our communities and is one of the central themes of indigenous Assemblies and meetings, for when the war affects not only our organisations but also our families, and women in particular, there is growing family breakdown and this is the beginning of the social and cultural disintegration of our peoples. What we here call an "acculturation of illegality" has thus emerged, which is benefiting those *powerful sectors that resort almost exclusively to the use of force* to achieve their political and economic aims, primarily the control of profits associated with the exploitation of natural resources, possession of fertile lands, control of geopolitically strategic territories and the establishment of *an economy based on illegal crops (coca and poppy)* over wide areas of the national territory. These regions are currently the subject of dispute between armed sectors, for control over them and this economy is vital for the financing of their armies and actions.

For indigenous peoples, the fact that we hold territories endowed with natural resources has been disastrous, for their extraction, together with the production of illegal drugs, are the most profitable activities. The exploitation of gold, oil, emeralds, coal, fine woods etc. are the favourite lucrative activities of the economic powers (legal or illegal). The greatest inconvenience in these economic extractive activities is the misery and violence their exploitation causes to the surrounding environment. Paradoxically, the regions most endowed with natural resources are those where the most conflictive focuses of the country are to be found, with the highest number of displacements, murders and kidnappings. Relatively young regions have, in a matter of a few years, become dilapidated zones on entering the mechanism of this economic activity. Misery and violence come to these regions to stay: the emerald zones of Boyacá, the oil zones of Arauca and Casanare, the coca-producing areas of Guaviare, Caquetá and Putumayo all typify this situation. With gold, timber and, most recently, coca[2], with its great rivers, its seas, its strategic position[3], with its natural wealth[4], with its great biodiversity and its lands aspiring to extensive livestock farming, the Pacific entered this dynamic and we are already feeling the consequences.

The eyes of many greedy "businessmen" with their capital flows are on this region; they move from one place to another in search of profit. And so we indigenous are seen as an obstacle to their path and, along with the Black and peasant populations, we become the object of all kinds of outrages on the part of the loggers, drugs traffickers, landowners and their paramilitary armies.

Because of this, we can understand why the *U'wa* indigenous people in the east of Colombia, consistant with their cultural ethos, radically oppose the exploration of hydrocarbons on their territory to the point of being prepared to commit suicide before permitting the entry of the oil companies.

A Work Agenda to Make our Dreams Concrete

We have shown how the principal problems oppressing us in the Pacific have to be seen within the national context. The solution to these problems, of necessity, requires structural political and economic change at national level. Nevertheless, we know that defence of the Pacific begins "at home". For this reason, we are currently in the process of drawing up our own agenda for struggle and making new adjustments to our organisations in order to adapt them to the situation of social, cultural, economic and territorial crisis our peoples are suffering. This will strengthen us internally to continue this already long struggle in defence of our territories. We hope that the Afro-Colombian communities of the Pacific will do the same. The future of the Pacific and of our peoples will depend upon it.

Within the macro-region of the Pacific, we are currently organised at a local, zonal and regional level. Some indigenous organisations are broader and have greater organisational scope, others are only a few years old and are in the process of consolidating their programmes of work. These organisations include, amongst others, the ***Organización Regional Embera-Wounaan del Chocó*** (the Regional Embera-Wounaan Organisation of the Chocó - OREWA), representing 240 communities and the same number of local Indigenous Councils. The 40,000 indigenous people it represents belong to five peoples: the Embera, Tule, Katío, Chamí and Wounaan; the ***Organización Indígena de Antioquia*** (the Indigenous Organisation of Antioquia - OIA), representing 13,500 indigenous people in the Department of Antioquia, belonging to the Chamí, Katío, Tule and Zenú peoples; and the ***Unidad del Pueblo Inkal Awa*** (the Union of Inkal Awa People - UNIPA), which is a zonal organisation grouping together 22,000 indigenous Awa in the Department of Nariño[5].

Recently, these organisations and indigenous peoples have decided to join forces and efforts to confront the threats and violence they are suffering from and to be able to defend their territories and lives together. This is materialising in the form of the ***Coordinadora Indígena del Pacífico*** (the Indigenous Coordinating Body of the Pacific), which is receiving support from IWGIA.

This indigenous coordination has as its main tasks the processes of cultural consolidation and economic and organisational appropriation of the indigenous territories in the Pacific region, in order to seek the political strengthening of our peoples with a view to becoming true social actors with the capacity to intervene in the region and to avoid the ethnocide that is in the making amongst our peoples. This desire for joint work is, in our opinion, one of the most important achievements of our organisations over the last twelve months and a challenge for the leaders and traditional authorities of our peoples.

Notes

[1] The Colombian Pacific covers an area of approximately 80,000 square kilometres. With 1,300 kms of coastline, it stretches from the border with Panama as far as Ecuador and is cut off from the rest of the country by the western mountain range.

[2] Drugs trafficking is gradually taking control of the region. Previously, its excellent geographic location was used to ship the drugs. Now this has extended to coca growing. Drugs trafficking is affecting all the region's productive activities and plays a role in the funding of political campaigns and paramilitary activity.

[3] The creation of a road network linking the Atlantic with the Pacific is considered to be a substantial development activity and there are four road macroprojects.

[4] The development of the oil, mining and energy sectors, along with biological and genetic exploration, are considered priority economic activities.

[5] The others are: the organisations of the Eperara Siapidaara people, being 7,000 people in the coastal area of the Departments of Valle, Cauca and Nariño; the ***Cabildo Mayor Awa de Ricaurte*** (the Awa of Ricaurte Higher Council), representing 8,000 indigenous Awa from the Municipality of Ricaurte en Nariño; the ***Asociación de Autoridades Wounaan del Pacífico*** (the Association of Wounaan Authorities of the Pacific), grouping together 29 Wounaan and Eperara Siapidara communities from Bajo San Juan; and the ***Cabildos Mayores Embera-Katío del Río Verde y Río Sinú*** (the Higher Councils of the Embera-Katío of the River Verde and River Sinú), with 3,500 indigenous Embera-Katío from the Departament of Córdoba.

ECUADOR

The most recent uprising, which took place in Ecuador during the last week of January and the first week of February 2001 (in other words, one year after the uprising that led to the fall of President Mahuad), shaped the nature of the socio-political dynamic of this country: a mono-ethnic State in structural crisis, controlled by an oligarchic and corrupt political and business elite, a bankrupt economy in which the poor (largely indigenous) constitute 80% of the population and who are constantly the most affected by the ubiquitous and draconian policies dictated by the International Monetary Fund, alongside an organised indigenous population embracing more than 40% of the country's population, and which has become a true social power capable of overturning government decisions with uprisings that paralyse the country, as was demonstrated during the last protest. Within this context, the indigenous nationalities and peoples of Ecuador thus move forward in a constant "toing and froing" with the government of the moment.

Year 2000: A Carrot and Stick Policy

Once installed in government – by the armed forces – President Gustavo Noboa experimented in his strategy of relating to indigenous peoples, with the supposed aim of "dealing with indigenous demands". It was lack of fulfilment of these that had led to his predecessor's downfall. The indigenist policy adopted by Noboa spoke for itself. Via decree and with grandiose offers he created the G.A.N.E: the "Great Ecuadorian National Agreement", led by a young lawyer "friend of and expert on the indigenous" with the support of anthropologists and sociologists who were "experts on Indians".

Prior to implementation of the government strategy, CONAIE, together with other social organisations in the country, initiated a campaign aimed at collecting signatures in support of a Popular Consultation on aspects inherent to the reform of the State and Ecuador's foreign policy. The main questions proposed for the Consultation related to: suppression of the three State powers (Legislative, Executive and Judicial); extradition of the corrupt bankers still on the run from justice; withdrawal of US military presence from the Manta base. The official presentation of the petition regarding the Consultation (according to opinion polls it had the backing of more than 90% of the general public) took place in August 2000.

At the market, Otavalo, Ecuador. Photo: International Labour Office

Young indigenous girl, Embabura, Ecuador. Photo: Rolf Blomberg

While this was going on, however, the GANE had become a real joke long before August. Six months of prolonged meetings demonstrated its ineffectiveness. After some thirty meetings, known as "tables for dialogue", the frustrating proof emerged of a lack of will on the part of the government to reach any real agreement. The GANE paradox ended in failure and a breakdown in dialogue. CONAIE's resolution to instigate another uprising was swift. In the face of this, and in order to neutralise the mobilisation that was now threatening to topple another president, the government displayed a creativity that harked back to the tragic era of the 16th century, focussing on distributing tins of tuna and wheelbarrows (in the communities considered to be the "most aggressive").

The call for an uprising, planned for September 2000, fell on deaf ears and the government celebrated the triumph of its supposed good policy over the Indians. To this event was added the much-publicised verification of the petition's signatures in support of the Consultation proposed by CONAIE and the other social organisations. According to the Supreme Electoral Tribunal, this contained a series of irregularities such as falsification of the majority of signatures. With this, the possibility of an unprecedented event - that the whole country should pronounce itself in favour of political reform proposed by indigenous people - evaporated into thin air. There were accusations of all kinds and an imminent criminal lawsuit against the President of CONAIE, Antonio Vargas, seemed increasingly likely.

Internal Control?

The falsification of signatures and the failed uprising were the ingredients that put CONAIE in the eye of the storm. In the case of the petition, although the non-indigenous social organisations were also jointly responsible for the failure, they never suffered the consequences. Demands for an internal purge of CONAIE were not long in the making. An Assembly held in November 2000 adopted a resolution to bring forward the renewal of CONAIE's leadership in March 2001.

However, this resolution did not discuss the role of the regional indigenous organisations nor of the grassroots of the different peoples and nationalities, for all these bodies were involved in decision-making around the Consultation, as well as in the failed uprising. All these bodies should and must take their responsibility as actors involved in these events, instead of passing all responsibility on to a few members of the Governing Council of CONAIE.

For this reason, the internal handling of this issue seems more like a kind of witch-hunt, and yet this can still be rectified. For this is everyone's responsibility, both leaders and grassroots, in the same way that decision-making functions.

Indigenous Reassertion

In these circumstances, and in the face of an apparently weakened indigenous organisation with no powers to organise, at the beginning of January 2001 the government began to adopt the traumatic adjustment measures prescribed by the IMF. CONAIE, which has maintained a line of radical opposition to these neoliberal policies, immediately commenced consultations aimed at taking a position opposed to this action. The measures were primarily linked to an increase in fuel prices.

In the face of the government's scepticism, in mid-January 2001, CONAIE announced an imminent indigenous uprising at national level. It began gradually, from 21st January on, with the celebration of the anniversary of Mahuad's fall. On 28th January, Quito was stormed by approximately 10,000 indigenous people. As all public spaces had been occupied by the military with the aim of avoiding being taken over by the indigenous, it was decided to request space from the Salesiana Polytechnic University and to remain there until the government responded positively to the Indian movement's demands which, in short, were a repeal of the measures.

Between 29th January and 1st February, the government unleashed a violent and racist repression. All access points to the university premises were closed off by the police, who prevented the entry of food, medicines, provisions and water. Even the electricity, telephone and water supplies were cut off. The approximately 10,000 indigenous people, including hundreds of children accompanying their mothers, remained in a kind of huge concentration camp, whilst in the streets pitched battles were taking place between indigenous supporters and mounted police who, on several occasions, bombarded the interior of the University with tear gas.

Only on 1st February, when the government realised that the uprising had taken hold all over the country and the effects (shortages of food and fuel supplies) were being felt in the urban centres, did the government choose to propose a dialogue. However, the repression did not stop and on 5th February came to a head when the army instigated a massacre in the Amazonian town of Tena, in which four people died and dozens were wounded. Following suspension of the dialogue by the President of CONAIE, the government finally agreed in large part to the Indian proposals.

On 7th February 2001, a 23-point Agreement was signed between the government and the country's Indian organisations and, since 20th March 2001, ways of making these concrete have been under discussion by means of various negotiating tables. The Agreements are basically short-term, and economic. Paradoxically, they do not include basic issues inherent to collective rights, the autonomy of Indian peoples or reform of the State model. It is undoubtedly essential that, at the same time as negotiating the points of the Agreement, the Indian movement initiate a dialogue with other social sectors regarding an agenda that proposes meaningful changes to the Ecuadorian politico-administrative system. The Ecuadorian indigenous movement has all the necessary qualities to lead this.

The reassertion of the Indian movement as a real social power and the firm and intelligent way in which the uprising was conducted has strengthened the leadership, particularly that of the President of CONAIE, Antonio Vargas. Following this action, the renewal of the Governing Council of CONAIE was postponed until October. There is fierce dispute among a number of figures from Andean organisations for CONAIE's Presidency.

Indian Peoples and the Decline of the Liberal Monoethnic State

"Zapatismo is one of the most important anti-neoliberal popular movements in the world, and if it can manage to link with other social groups at international level, it could change the course of history." Thus spoke the American intellectual, Noam Chomsky, in the Mexican "*La Jornada*" newspaper.

A path that has been trodden step by step, in which the footprints of the men and women of the other Mexico remain more deeply in the land their ancestors walked upon, long before Cortés and throughout the whole time when a minority was organising and flourishing – as occurred in all of the continent's ex-colonies – a democracy – as Chomsky asserts – designed to protect a wealthy minority from the majority or the "economically backward".

"Violation of national sovereignty"; "fragmentation of the Country"; "creation of a State within a State". These are the reasons given by the traditional economic and political elites opposed to the San Andrés Accords. We hear the same reasons in Ecuador. They are reasons that are shared by the upper echelons of all the ex-colonies. They are the reasons of those who defend the validity *ad infinitum* of the mono-ethnic State, the unsustainability of which - and the consequent urgency of profound changes - is more evident than ever. This represents what Marcos holds up as a fundamental condition for eradicating the spiral of social conflict: "Get to the roots of the problem, otherwise making policy will continue to be no more than the art of pretence."

President Fox has insisted on the signing of a Peace Agreement. One has to wonder why the San Andrés Accords are such a battleground for the government? The only things we have for a fact, a fact that is still a painful memory, are the massacres perpetrated by the federal army in Aguas Blancas and El Charco. Peace will only be possible on the basis of new political, social, economic and cultural rules meaning, in essence, respect for Indian peoples' right to self-determination. Events in Mexico are being repeated in Ecuador and in all the ex-colonial states of the world where Indian peoples are forced to live within mono-ethnic structures, where the *sui generis* adaptation of liberal democracy has reduced the public to the mere role of voting and observing. Paradoxically, at the same time as the world is witnessing the arrival of a much-trumpeted globalisation, it is also witnessing the decline of these mono-ethnic structures.

The Zapatista march, the uprising by the Quechua and Aymara Aylluss in Bolivia, the solitary historic right of the Uwa in Colombia, the Indian uprisings in Ecuador, all form stones that one by one chip away at the gigantic dome protecting the mono-ethnic structure that is supported by the sacred beast of wealth and corruption. These stones are called resistance, the form in which hope appears when times are bad.

Democracy or Ethnophagous Indigenism?

"Ethnophagous indigenism" is the concept by which Díaz Polanco defines the State indigenist policies that are implemented in Latin America in response to ethnic emergence and which consist of recognising a package of rights accompanied by declarations on the pluriculturality and multiethnicity of the States, whilst at the same time, however, largely maintaining the *status quo* and draconian economic models.

History notes that recognition of Indian rights has never been through the exclusive good will of the elites, nor through the validity *per se* of a western model known as "democracy" but through perseverance, struggle and resistance in order to gain recognition of the right to exist as peoples. For, when building the nation - as a democracy or not - Indians have always been ignored. In other words, the States were designed without the Indian peoples, in the image and style of a European or North American State. Consequently, there has been no other understanding of democracy and its ideals, no other reference point, than that universally taken on board by the West since the times of Ancient Greece. Hence this model is referred to as the only possible scenario in which to achieve multiple freedoms and the only way to gain the convergence of the most diverse conflicts and agreements; these are only processed within the strict parameters of the Western vision.

The application of collective rights is thus exceptionally difficult if not impossible, since the freedoms that are universally considered within the western logic are fundamentally individual ones. For this reason, we can also understand why an indigenous councillor, mayor, prefect or deputy is not elected within the current form of democracy. It is for this reason that the administrators of Justice and the Law schools do not recognise the existence of Indian legal systems. It is for this reason, too, that the autonomy proposed by the Indians scares the defenders of the unitary State and the proposal for a Plurinational State is understood within the logic of a Proletarian State or an Indian State. It is for this reason, too, that deeply ethnocentric, homogenising and anti-environment models of development are applied, alien to the indigenous philosophy of "good living".

For this reason, there is a need to redefine our understanding of Democracy. To build a democracy based on the multiple ideals and paradigms of the West and of the different societies in Ecuador, a democracy whose dynamic focuses on interculturality as the ontological code of conduct in all tasks of daily social, political, economic, cultural and religious life. Merely stating that Ecuador is multiethnic and pluricultural does not make us intercultural. Interculturality must be understood as a process of communication whose point of departure is not the sender but the receiver of the message. We need to reconceptualise democracy, beginning by stripping it of its cosmogonic western essentialism. The challenge is to reinvent a "multi-paradigmatic" democracy.

If not, in the belief that the Indians must participate in the democratic game, the same logic of indigenist policies in force until the 1970s may occur once more, policies that proposed integrating the indigenous peoples into "national society", making them renounce their own identity in order to assimilate them. A meeting and harmonisation of the different democratic cultures existing in Ecuador thus needs to be put forward in order to bring an end, via new structures and relationships, to ethnophagous indigenism.

PERU

General Outlook

The mood of profound instability and political turbulence that has characterised Peru in recent years was maintained, and taken to an extreme, during the second half of 2000. The expected electoral fraud was quite openly confirmed, due to an overconfidence in the possibilities offered by an absolute control of absolute power, the aim of which proved to be to remain in power. Nevertheless, the strong popular reaction of 28th July and a growing lack of confidence on the part of international human rights organisations began to deflate the arrogance of a military leadership headed by the leader of what is nowadays considered to have been a "band of gangsters" but which ruled the country for 8 years under the façade of being a legitimate government.

The usual methods of twisting information gradually became more ineffectual and a frustrated attempt at camouflaging a large network of drugs traffickers and arms dealers as a success of the Intelligence Service was the trigger for a series of processes that were to end up impacting severely on well-organised structures, ranging from the intelligence service to the military.

On 14th September, the first in a long series of documentary films appeared, proving the extent of generalised corruption. On 16th September, President Fujimori announced his retirement and, following the denunciation of enormous sums of money transferred to Montesinos via different Swiss banks, on 10th November the President fled the country.

The new government, which took power on 22nd November with a transitional programme aimed at creating fair conditions for new elections, created a space for hope and democratic credibility which, however, did not fully manage to rid the people of their profound disappointment in the political class, making the electoral outlook and the country's future uncertain.

The Situation and the Indigenous Agenda

The uncovering of a generalised immorality ended up being of assistance to a series of demands indigenous people had been making over recent years, particularly with regard to the political manipulation of State resources and of funds from large multilateral-funded projects, the enormous significance of State corruption within public bodies, the armed forces and the police, not to mention the judicial powers, as well as a generalised atmosphere of immorality at local level, by means of the apparatus organised by Absalón Vásquez[1], the "Montesinos of civil society", through the prefectures, town halls, Temporary Councils or special projects.

The authoritarianism and deep social crisis have offered an environment that is not particularly favourable to significant progress vis-à-vis long-term proposals such as those characterising this stage of the Peruvian indigenous movement's development, whose agenda includes issues such as:

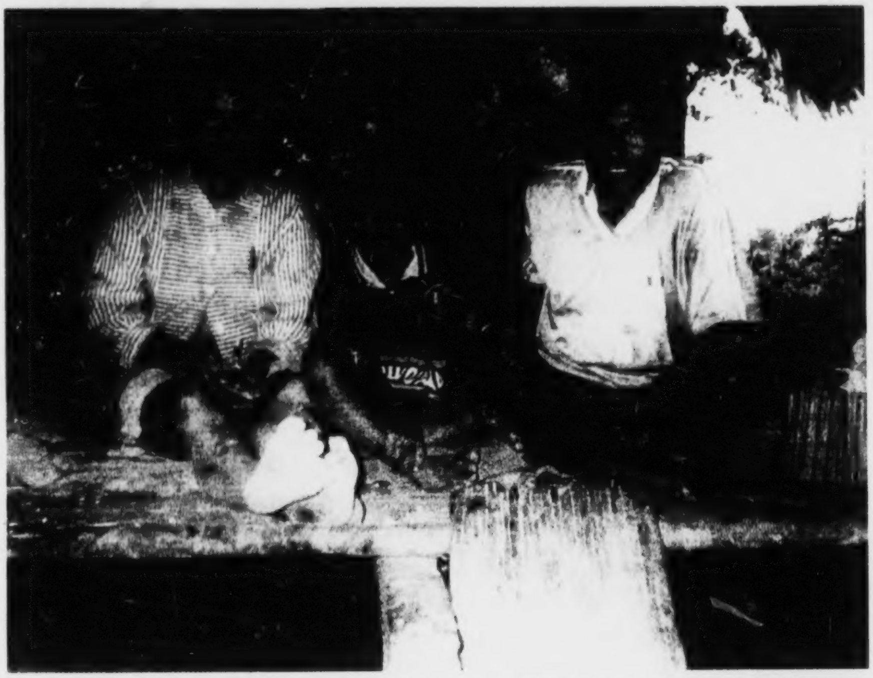
- proposals for local government based on intercultural civil pacts;
- the Plans for Life[2];
- the proposal for an Indigenous Law or the regulation of institutions, such as consultations on key issues, for example, hydrocarbon or mining exploration or regarding the protection of knowledge (practices and innovations);
- implementation of Convention 169 and systems of administering indigenous justice and
- the design of guidelines for managing culturally protected areas (the Sira, the Amarakaere Reserve, Vilcabamba, Kubaim-Morona and others).

Nevertheless, and in spite of serious difficulties, the Peruvian indigenous movement has been surmounting the many obstacles in order to protect its rights at local, regional and national level, in a tense and hostile environment in which clientelism and blackmail were the only things on offer from the State and in which indigenous interests have habitually implied a hindrance to the discretion required when making public "deals" relating to natural resources and budgets.

In contrast, opportunities and settings open to indigenous proposals and initiatives and offered from the level of central government have not been lacking, although these proposals have never managed to form stable spaces for coordination.

In no case has it been possible to control the actual dissemination of these opportunities, and far less the fate of the results of consultations, and so the limited openings for dialogue never led to a sufficient basis of trust and did not culminate in practical results, with the exception of the relations established with the Ombudsman (*Defensoría del Pueblo*).

The Municipalities have not led to the democratic space that was expected of them the year previous. In general, their role has been reduced to that of a link in the distribution chain of privileges and co-optation, forcing their complicity in the receipt of partially or totally imaginary works and programmes. For their part, the ma-



This woman is a "Mashco Piro" who used to live in voluntary isolation. After an accident, she and her sister were forced to leave their group and they are now living in an indigenous community where they also have married.
Photo: FENAMAD

nipulation of votes and the scandalous electoral fraud committed against indigenous candidates (in the municipalities of Manseriche, Tahuania, Pastaza, Rio Tambo, etc.) remain unpunished.

With few exceptions, we can mention the other spaces for popular participation, whose development had been taken as guidelines for work over the period. Faced with a non-existent State, agreements - of necessity provisional and uncertain - have been of very little significance. Another issue prioritised in the original plan was that of Peru-Ecuador bilateral relations, which promised to open up a wide range of opportunities for the consolidation of cross-border indigenous peoples. For the moment, it is another of those issues that is raised temporarily but soon dropped, as it is given no expression in concrete proposals for actions and initiatives that could be implemented.

With regard to hydrocarbons, after a long period of negotiations, indigenous demands were flagging due to the dynamic of the process itself. There are very few exploratory initiatives that continue to be active and, in these cases, the indigenous population has managed to effectively control the situation. New drilling is rare and new finds nil. Nevertheless, the problems could re-emerge in the short term: the unconditional resistance of the Achual[3] people in the face of the ARCO Company's plans resulted in this company transferring its rights to OXY, a company with far less scruples, with strong political links and with precedents for placing communities in jeopardy and which has already begun to issue warnings concerning its firm intention to enter the concessionary territory, no matter what. Given these contextual difficulties, the indigenous movement has played a fundamental role in some regions. We will now go on to look at some of the most outstanding events of the period.

The Process in Madre de Dios

In the case of Madre de Dios, the mining and forestry problems and the aggression towards the indigenous population in isolation have again triggered a significant indigenous reaction.

Faced with the serious social problems of the Department of Madre de Dios and the aggressive depredation of the forests on the part of large logging companies, the popular organisations called upon all of the departmental associations to join forces and put forward a joint platform of needs to the government.

This call for unity was organised by those organisations considered as being the strongest in the region: the Departmental Agrarian Federation of Madre de Dios (FADEMAD) and the Native Federation of Madre de Dios (FENAMAD).

An initial awareness-raising activity was successful in uniting all the associations, women's and students' organisations and agreement was achieved on the aims of the initiative, agreeing a common platform that was discussed with the local authorities. This was not favourably received and so the regional assembly declared the First Regional Strike in August, supported by more than five thousand people, including farmers, indigenous people and the population at large.

The town was paralysed for three days and indigenous men and women, like the rest of the inhabitants, had to withstand harsh and indiscriminate repression. The presence of commissions of Congress members and Ministers enabled the Platform for Regional Struggle to be discussed and supported, a number of commitments being made.

With regard to the needs put forward by the indigenous population, the government agreed to respect the decision of the indigenous population in isolation, to thoroughly analyse the mining problem, to recognise ways of including indigenous territorial control within the communal territories and natural protected areas and to conclude the definitive categorisation of the Amarakaere Communal Reserve.

A maximum 10-day period was established in which to tackle the different lists of demands or, failing this, an indefinite stoppage would occur.

The Second Regional Strike was held once this period had expired and an indefinite stoppage began that continued from 18th to 26th September, at which date the Government agreed to some of the demands, resolving - amongst other things - administrative problems in timber extraction.

The strike gained massive support from the population. A large number of police contingents brought especially from Lima violently clashed with the demonstrators, resulting in two peasants wounded by gunfire and two indigenous people tortured, with 120 demonstrators arrested.

For their part, since August 2000, the communities most affected by gold mining on their lands have begun actions to evict the miners, thus intensifying the confrontations.

Despite the fact that they have made efforts to come to an agreement on four occasions, all the meetings have unfortunately ended in failure, with the miners maintaining an inflexible and arrogant attitude. They are led by the mining employers, who have held leadership positions in the professional organisations. Faced with these events and the indifference of the authorities, the communities have maintained their decision not to allow the miners to re-enter their lands.

In September 2000, FENAMAD had the opportunity to meet the Vice-Minister for Mining in Lima, in order to try to find an answer to the mining problems in the communities. At the meeting, the previous government's Vice-Minister and his technical team, as well as FENAMAD and its team, arrived at a joint agreement to resolve the problem in the following way:

- In order to avoid the granting of new concessions, a Supreme Decree would be issued ordering that new reports in the areas occupied by the communities would NOT BE ACCEPTED.
- For the cases of miners already operating: given that they have acquired rights granted by the Mining Registry, an inspection and environmental audit would be undertaken with the aim of checking fulfilment of environmental obligations and fulfilment of the obligations provided for in the mining law itself, such as the prior agreement of the landowner or the payment of rights. If lack of compliance was found, fines or cancellation of the concession would be applied.

The Ministry fulfilled the inspection and audit in three communities, where the reports proved a lack of compliance of legal obligations on the part of the miners. Further commitments remain incomplete due to the change in government.

FENAMAD has recommenced negotiations with the new Transitional Government in order to continue with its aim of resolving this problem at the highest level of government authority, and has the support of tutelary offices such as the Ombudsman and SETAI (Department for Indigenous Affairs).

On the other hand, there is a great deal of interest on the part of the logging companies in extracting timber from the area of activity of the indigenous populations in isolation, for which reason they have asked the government to declare this a permanent forest extraction zone.

However, in recent months a series of events have occurred that prove the presence of indigenous populations in isolation, such as the attack on a group of fisherpeople in September 2000, which resulted in a young boy of 18 being wounded by an arrow in the back of the neck. Events such as these confirm the need to restrict access to the zone. With this aim, FENAMAD has undertaken a study on territorial demarcation with funding from IWGIA and which is now in its final stages.

Alongside this, pressure on the government to refrain from granting forestry concessions in the area continues. In addition, through the Territorial Reserve and Defence Campaign, which began in October 2000, the zone is under surveillance and the corresponding complaints against the loggers made who, in spite of being informed of the risks existing in this area, continue to work within it.

In spite of this, the authorities decreed a suspension of the closed season for mahogany and cedar in the area, increasing the entry of loggers and other illegal extractors onto the lands of the isolated indigenous peoples. This has led to this indigenous population defending itself, afraid of the threat of the foreigners, causing one case of an arrow wound suffered by one of the members of the brigades making incursions into their territories.

Finally, on 12th February 2001, there was a clash with a group of isolated indigenous people in the Santa Cruz community, leaving a considerable number of isolated indigenous wounded and possibly seven dead, according to as yet unconfirmed reports from FENAMAD.

Spaces for Coordination

Largely with funds from multilateral financial organisations, a good number of coordinating initiatives have been undertaken which, in the view of the indigenous organisations, were not generally aimed at resolving indigenous problems.

The following are worth mentioning:

- The AIDESEP-Ombudsman Agreement aimed at protecting the fundamental rights of indigenous peoples.
- The Consultation on an agenda of legal initiatives to be introduced to the Congress of the Republic (due to time limitations

restricted to the Law of Intercultural Bilingual Education and the Law of Indigenous Justice).
- The definitive launch of the Indigenous Affairs Committees within the legislative and executive powers.
- Specific legal consultations (such as the System for the Protection of the Collective Knowledge of Indigenous Peoples or the Regulations governing the Forestry Law).

This opening up is in contrast to the unexpected promulgation of the new Forestry Law. In this case and, being a law that profoundly affects indigenous interests, it was not the subject of consultation, apart from the superficial consultation that was undertaken with some NGOs on a text that differed substantially from the final official text.

Forestry and Wildlife Law No. 27308 is the product of a very long history of "one step forward and two steps back" relating to the modernisation of a sector which, at this precise moment, forms one of the areas most opposed to social control. The events in Madre de Dios, initially denounced by FENAMAD and other popular forces, brought to light the Mafia-like handling of concessions to the service of the mass depredation of the national forests by national and international companies, guaranteed impunity on the part of the regional authorities.

Nevertheless, the new Law, welcomed by some as the most modern on the continent, does not imply significant advances in terms of indigenous peoples' rights over their territorial heritage and, instead, consolidates State control over decisions in this regard. Whilst the indigenous organisations are trying to define operational rights in the Law's regulatory framework, the ambiguity with which the rights of indigenous peoples are depicted within it makes it clear that, in any case, this is not an attempt to legislate for them but with complete disregard for them.

In many people's opinion, the promulgation of this law, like the others that form the framework for the expropriation of indigenous peoples' natural resources (the so-called Law of Lands and the Law of Exploitation of Natural Resources), all (despite their importance) adopted without consultation, shows the other face of the "consultation game" which, in view of its results, could be understood as having been intentionally unsuccessful.

The Events in the Central Forest and Decree 15-2001-PCM

Yet again, the Asháninka population of the Central Forest has been the major player in the inventory of indigenous struggles. The mass invasion of San Ramón de Pangoa, considered strategic in definitively overcoming indigenous resistance and dividing their traditional territory in two, once more caused indigenous populations and settlers supported by the local authorities to clash. On 30th January 2001, an attempt to legally evict the invaders took place which, due to the reduced number of police, was unsuccessful and left an unknown number of people wounded. The withdrawal of the police left the indigenous population of the community at the mercy of a mob of furious settlers who tried to blow up the San Ramón bridge and stoned the judicial authorities and staff of the Ombudsman's Office who were in the area. On 31st, 1,500 settlers with eight guns entered the community and overpowered the indigenous patrols[4], setting fire to three houses and threatening to destroy the community.

In the face of these actions, on top of the two decades of suffering and genocide already suffered, the indigenous organisations of the Central Forest embarked upon a march to Lima and undertook an intense lobbying and awareness raising campaign that obtained significant results, succeeding in putting the issues directly to eight sectoral Ministers and to the new President of the Republic, Dr. Valentín Paniagua.

As a result, and recognising the country's moral obligation to the Indigenous Peoples, on 14th February by means of Supreme Decree 015-2001-PCM, the President established a Multi-Sectoral Commission at inter-ministerial level to agree - with the national indigenous organisations - a solution to the eight priority points within a period of 60 days and to formulate, within a further 120 days, integrated proposals to guarantee the full validity of the constitutional rights of indigenous peoples and communities and to promote their well-being.

What the Future Holds

Due to this important and historical organisational achievement, the period closed with very promising perspectives that create new possibilities for real and effective dialogue between the State and indigenous peoples, possibilities that were unthinkable throughout the whole of the past decade of authoritarianism.

For many, it may well be a period full of opportunity as it is certain that, in many cases, the involvement of some of the most outstanding elements of the political class within the transitional government has been secured, and that there is a general environment of judicial "cleaning up" that could encourage solutions to the problems of indigenous peoples that had been dragging on during all the years of the shady management of public affairs.

With their characteristic pragmatism, many organisations have decided to test out these opportunities and are preparing processes for agreements with the transitional State apparatus in search of long-term solutions to their problems. It is very possible that these agreements, which are understood as opportunities of the moment, will take up a good part of the indigenous movement's attention over coming months, along with the preparation of agendas to receive a new government.

At the end of the period, the Indigenous Movement was obliged to undertake urgent tactical changes in all negotiating processes being held with the State apparatus. This was not only due to a change in government but to a whole revolution in objectives, styles, expectations and procedures on the part of central government, along with the resistance of local powers to abandoning the comfortable positions obtained during the dictatorship.

Conversations and negotiations underway have been taken up by a transitional government full of good intent and with great popular sympathy, but limited by circumstances. The atypical nature of a period such as the present (and the one to follow is unlikely to be very different) has caused bursts of acceleration and sharp braking, changes of direction and the reconstruction of agendas at uncommon speed. The transitory nature of the current political moment (with a government that is not going to last but whose prestige could promote the consolidation of some important achievements) is forcing the organisations to be alert to the opportunities and to distinguish those that could last from those that are merely contrivances of the moment.

Routine, the culture upon which more solid processes are built, is not - at this precise moment in time - (as can be seen), the natural environment of the Peruvian indigenous movement.

Notes

[1] A former member of the APRA party and the principal confidante of Fujimori. He was the great organiser of the "local bases" of Fujimorism and, through one of the party's of the pro-government alliance, "*Vamos Vecinos*" ("Come on, Neighbours"), he was responsible for the redistribution of social funds in the Provinces and Districts throughout Peru.

[2] In AIDESEP's view, the Life Plans are mechanisms for collective reflection that attempt to evaluate the history of an indigenous people during the years of contact with national society and attempt to establish broad lines of action for that people from a long-term perspective.

[3] The Achual belong to the Jibaroana linguistic family and live in the north Peruvian and south Ecuadorian forests, largely along the rivers on the Pastaza river basin plains.

[4] Communal forces with the sole aim of self-defence.

BOLIVIA

During the year 2000, peasants and indigenous peoples realized that government policies with regard to land distribution and natural resources in practice denied them the territorial rights they had obtained over the previous decade through constitutional and legal reforms. In a context characterized by a diminution of their rights, the only alternative has been mobilization by the people in order to generate spaces for negotiation with government agents through such action.

The Water War

Inhabitants of the valley regions of the country were faced with the Potable Water and Sanitary Sewer System law, which was approved in October 1999. This law opened the door to the privatization of water resources. Following approval of this law, water was privatized in the Department of Cochabamba when, by means of a concession, the government surrendered the water sources that provided drinking water. Traditional users were excluded from the right to access this resource and small-scale infrastructure constructed by communities passed into the hands of a private company. From this point on, they had to pay this company for water extracted from their own lands and by their own methods. By the middle of January, various social sectors had united to form the *Coordinadora del Agua* (the Water Coordinating Committee)[1] and blockaded the city of Cochabamba. Through these actions, they managed to ensure that the company which had purchased the concession would not control community irrigation systems. During the first days of February they took over the city, an action that was called the "water war" because of violent confrontations between the Army, police, and demonstrators. This takeover forced the government to commit itself to changing the law. However, in April a third demonstration was necessary to ensure that the law was actually changed and the concession contract annulled, legal actions that were needed in order to safeguard the rights of the users.

The Rural Blockade

In September, the highland peasant movement and coca producers in Chapare blockaded the main national highways for a month, leaving

Indigenous peoples demonstrate, Bolivia. Photo: Alejandro Parellada

The Third Indigenous and Peasant March, June 2000. Photo: IWGIA archive

BEST COPY AVAILABLE

the country's central axis (La Paz-Cochabamba-Santa Cruz) immobilized. These actions were a reaction against government policies and a development model that gives them only marginal possibilities of surviving in conditions of dignity. These prolonged actions made the government subscribe to agreements in which, among other things, it committed itself to modifying the main laws relating to land and natural resources. It also agreed to definitively suspend construction of the military bases in Chapare that were part of the process of eradication of surplus coca crops.

The Third Indigenous and Peasant March for Land, Territory and Natural Resources

By the beginning of the year, several of the indigenous organizations that had presented claims for *Tierras Comunitarias de Origen* (indigenous territories) and some regional organizations had come to understand that the process of consolidation of the rights recognized in national legislation was going down a road that would hopelessly lead to the elimination of those very same rights. Their fears were based on the following facts:

- The inexplicable delays in promulgating new regulations that would ensure the correct implementation of the *Ley del Servicio Nacional de Reforma Agraria* (the National Agrarian Service Reform law) that had been agreed upon with the organizations.

- The National Institute of Agrarian Reform - INRA, which is responsible for land titling, issued and hoped to implement technical norms that would enable illegal third parties[2] inside indigenous lands to consolidate their rights. This would have been to the detriment of indigenous peoples, who are the legitimate owners of these lands.

- The *Viceministerio de Asuntos Indígenas y Pueblos Originarios* (VAIPO, the Viceministry of Indigenous Affairs and Native Peoples), through supposedly technical spatial needs studies, systematically reduced the areas to be titled as indigenous territories[3].

- At the end of 1999, a Supreme Decree was approved, which converted former rubber and brazil nut concessions into forestry concessions. Through implementation of this decree, large areas of the northern Amazon would be consolidated in favor of *ba-*

rraqueros[4], areas in which thousands of peasants and native peoples live and carry out traditional activities[5].

- An arbitrary rejection of three appeals concerning the unconstitutionality of INRA's resolution 098/99 presented before the Constitutional Tribunal. With this resolution, INRA, part of the executive branch of government, claimed legislative functions, established a summary and almost secret process to provide forest concessionaires with vast areas of forest lands, and avoided the legal *saneamiento*[6] procedure.

As a result of these measures, the process of titling indigenous lands initiated in 1997 did not produce satisfactory results. The process reached a point where, in practice, the territorial claims were not viable. Faced with this situation, indigenous peoples initiated a strategy of mobilization by creating links with other social organizations, such as peasant and settler organizations in eastern Bolivia, who were also faced with serious land tenure problems.

In April, these organizations presented their demands to the government and informed it that they would mobilize until they achieved effective solutions to their main problems. As a result, the government rushed to expedite the new regulations for the INRA law. However, as the organizations feared, some of the articles of these regulations were changed to facilitate and consolidate through the administrative measures mentioned above, recognition of the property rights of private individuals and to grant large areas as forest concessions.

The government did not provide any answers. The march began on June 28 in the Department of Pando, where several hundred peasants and indigenous people traveled from their communities to the city of Riberalta. There they were joined by the *Central Indígena de la Región Amazónica de Bolivia* (CIRABO, the Indigenous Organization of the Amazon Region of Bolivia), the *Federación de Trabajadores Campesinos de la Provincia de Vaca Díez* (Federation of Peasant Workers of the Province of Vaca Díez), and the *Central Campesina de Guayaramerín* (Peasant Organization of Guayaramerín). Together they traveled to Trinidad. They arrived in Santa Cruz on July 6 where they were joined by delegations of indigenous peoples and peasants organized by the *Coordinadora de Pueblos Étnicos de Santa Cruz* (CPESC, the Coordinating Committee of Ethnic Peoples of Santa Cruz) and federations of peasant workers and settlers from the Department of Santa Cruz. Later, peasant federations from the Beni and the Gran Chaco province of Tarija, as well as organizations representing the populations of three indigenous territories being claimed in the Department of Beni (the Multiethnic territory - TIM, the Isiboro Sécure Indigenous Territory and National Park - TIPNIS, and the Mojeño and Ignaciano territory - TIMI), joined the third march.

Before the march left Santa Cruz, the National Director of INRA and the Vice-Minister of Indigenous Affairs (VAIPO) rushed to make small offers so that the natives would stop the mobilization. However, the march continued and demanded definitive solutions to their demands. In the city of Montero (45 km. to the north of the city of Santa Cruz), 6 government ministers arrived to negotiate with the leaders of the march. The dialogue took two days and lasted until dawn each day. The dialogue bore fruit and the organizations achieved concrete agreements to resolve their demands, which they had sent to the President of the Republic two months earlier.

The fact that the government initiated the dialogue and, without major changes, accepted the solutions proposed by the organizations proved once again that the rights of indigenous people and peasants only become reality through the use of pressure tactics.

Achievements of the Third March

The achievements of the march were significant. The decree that transformed the *barracas* into forestry concessions and the administrative resolution that authorized INRA to declare lands available for concessions were annulled. Prior to the march, nearly 3,800,000 hectares were ready to be granted in concession but, as a result of the march, these areas will now be titled as indigenous and peasant lands. In the decree that changed the new regulations of the law, INRA's ability to continue declaring lands as forestry concessions was limited, and it was established that such actions could not be taken without first carrying out the *saneamiento* of agrarian property, for which a specific regulation was instituted.

These changes to the new regulations of the INRA Law were aimed at guaranteeing the legal paperwork for the *saneamiento* process of indigenous lands and impeding the award of land rights to owners of unutilized lands or to those who had illegally acquired lands inside indigenous territories. With these changes, one of the main problems that led indigenous peoples to march was resolved because the implementation of technical rules issued by INRA had led to properties of up to 2,500 has. being consolidated in favor of third parties even though they did not fulfill legal and constitutional requirements. This had led to massive reductions in the size of indigenous territories throughout the country and, in some cases, the disappearance of these territories altogether. These clearly illegal technical rules had been contested by the organizations affected and, in response, INRA put a halt to their respective *saneamiento* processes. This is exactly what happened during the titling process of the Monte Verde territory claimed by the Chiquitano people. With these changes to the regulations, these technical regulations automatically disappeared and processes that had been suspended could now continue.

VAIPO's ability to recommend areas to be titled for indigenous peoples was eliminated and the timeframes within which the processes had to be completed were reduced.

Advances in the Titling Process of Indigenous Lands

In just 15 days, what had seemed impossible during four years of fruitless *saneamiento* of agrarian property, costing large sums of money contributed by international donor agencies, was achieved. Although it had been four years since the approval of the INRA law, which required that 16 territorial claims be titled in a maximum span of 10 months, up until then only 657,736 has. had been titled. This area included the claims of the Ayoreo people and a part of the claim of the Guarayo people[7]. The march obtained legal authorization for the issuing of titles for the following indigenous territories: the Multiethnic II in the northern Amazon, Lomerío in the Chiquitanía and Yuracaré in the tropics of Cochabamba. The total area of these territories is 832,735 has. Another 1,077,115 has. are close to being titled, including the Monte Verde territory.

The Multiethnic II Indigenous Territory

The northern Amazon was one of the main protagonists of the march. The mobilization in this region was characterized by a strong alliance between indigenous peoples and peasants, which was important in defeating the government's decision to convert nearly all of the Department of Pando and the northern sections of the departments of Beni and La Paz into forestry concessions.

As of December 1999, according to INRA's projections, of the 441,000 has. claimed by the Multiethnic II territory the "*barraqueros*" would receive approximately 156,000 has. and the peasants 45,000. Coincidentally, in its preliminary spatial needs report, VAIPO recommended the titling of 236,000 hectares. Once dialogue was initiated, the study was modified to recommend the titling of 407,000 hectares.

Following the march, third party rights were revised on the basis of new rules and INRA issued the titling resolution for the Multiethnic II territory, with a total area of 391,000 hectares. This meant that the area that was supposed to be awarded to the *barraqueros* was reduced to less than 6,000 hectares, since peasants still received the projected 45,000 has. However, two more mobilizations were necessary: 1) a blockade of roads for several days during December carried out in coordination with transport workers, so that the resolutions corresponding to third parties were emitted, a prerequisite for final titling; and 2) one more blockade in February, which lasted until they obtained the executive title. This title was emitted on the 23rd February and was for 289,000 hectares. The reduction is due to the fact that a group of 36 third parties contested the titling resolution for an area equal to 102,000 hectares.

With this title the Esse Ejja, Tacana and Cavineño indigenous people, with an approximate population of 4,000, will have their territorial property rights guaranteed. At the time of writing, they had already organized a management and administrative committee for their territory.

The Chiquitano Indian Territory of Monte Verde

The titling process for this territorial claim had been at a standstill for more than six months. This extended delay in the titling process was INRA's response to the objection that indigenous organizations presented against the technical rules it had issued, which valued the properties of third parties in order to establish the legality of their titles and to determine whether they were fulfilling a socio-economic function. These objections sought to prevent the territory being given to landowners in the region.

Once the legality of the *saneamiento* process was restored through changes in the regulations governing the law, the process recommenced. Since the many illegal interests that conspired against the titling of this territory no longer had the backing of the technical rules mentioned above, it appeared that the process would culminate satisfactorily in the terms agreed upon with the government. However, INRA delayed its completion and opened up an unexpected and inconvenient reconciliation process with third parties.

On September 29th, INRA issued the titling resolution but without the accompanying resolutions for each one of the properties of third parties and with incomplete and erroneous geographic information. The area the resolution gave to the natives did not include areas that legally belonged to third parties, as well as 120,000 hectares claimed as forestry concessions. As a result, it only provided the Chiquitanos of this region with 881,000 hectares of the 1,060,000 hectares they had originally claimed. Although it disregarded provisions in the law and a recent decision by the Supreme Court of Justice[8], the decision to consolidate the forest concessions was ratified by the Minister of the Presidency, reneging on commitments made during the third march.

The protest marches by the communities and organizations of this territory led to the suspension of implementation of this resolution by INRA. In order to convince the organizations to accept the consolidation of forest concessions, INRA offered to compensate them for all the areas given to third parties and already granted as concessions. In this way, the final area titled would be equal to the surface area originally claimed (1,059,964 has.). However, at the same time, INRA summoned all third parties to a "reconciliation hearing", an extraordinary process that led to third parties placing more pressure on indigenous people in order to increase the size of their properties. In fact, third parties were able to effectively increase the area they were to receive by nearly 30,000 hectares.

The agreement between INRA and organizations representing the indigenous people of Monte Verde was signed in November. However, by the end of the year, INRA had not issued the new titling resolution. This made it possible for large landowners to appeal to the National Agrarian Tribunal against the resolution issued in September, thus paralyzing the process once more. Third parties subsequently presented an appeal concerning the unconstitutionality of several articles of the new regulations, with the pretence that the final part of the *saneamiento* process should be redone.

The titling of Monte Verde currently depends on a decision to be made by the Constitutional Tribunal. A surface area of 851,000 has. within the area claimed and 208,964 has. more outside of it are still waiting to be titled.

The Chiquitano Territory of Lomerío

In spite of all the technical problems that came to light, the *saneamiento* of the Lomerío territory was concluded by the middle of June. Up to that point, VAIPO had not presented the corresponding identification of spatial needs study. This study was presented during negotiations with leaders of the march and recommended the titling of 384,000 has. or, in other words, 84,000 has. more than what had been originally claimed.

For its part, INRA committed itself to issuing the title resolution by the beginning of August. This did not happen until 20th October

2000, and the resolution was issued for an available surface area of 275,000 has. During this period, INRA attempted to establish a "reconciliation" process, as it had done in Monte Verde, but the leadership and the communities stood firm, avoiding the opening of this process.

Since the area to be titled is less extensive than the area recommended by VAIPO, the communities have already requested compensation for the difference. The indigenous organizations have identified areas that can form part of this compensation, and these are precisely those areas that were previously declared as concessions by INRA. Following the march in July, the government had also agreed to give these areas to indigenous peoples and peasants. Once the titling process has ended, the next step will be to initiate the compensation process, which should not present any major obstacles.

The Yuracare Territory

The titling process of the Yuracaré territory has generally been the least conflictive. *Saneamiento* was carried out with teams from the respective zones of the territory, and the indigenous technical expert worked efficiently. It is worth highlighting that, in this region, the natives never worked as peons on large estates and maintained extensive control over their territory. The few non-natives living in this area accepted the titling of land in favor of the Yuracaré people and were able to retain the areas they occupy as they are members of communities.

Nevertheless, VAIPO recommended the titling of nearly 22,000 has. less than what was originally claimed. Despite this recommendation, INRA decided to title the whole area claimed, which was 244,335 has. The executive title was formally issued in October last year.

The First Indigenous Territorial Claims (TIM-TIMI-TIPNIS)

The first territorial claims of the Bolivian indigenous movement were recognized by means of presidential decrees enacted between 1990 and 1992. However, 10 years on, the *saneamiento* process, which leads to the final titling of territories, had still not begun and it seemed unlikely that it would be carried out. The Isoboro Sécure Indigenous Territory and National Park (TIPNIS), the Multiethnic Indigenous Territory (TIM) and the new territorial claim of the Moxeño-Ignaciano indigenous people (TIMI) had been put on hold for some time amid conflicts over access to forest (timber) and oil resources.

The organizations that had claimed these territories decided to join the on-going march. The difficult weather conditions made it hard for community members to leave their territories, which is why they did not join the march until the night when the final text of the agreement was being discussed, a text that was eventually signed by the government and the leaders of the march.

In spite of their last minute arrival, organizations from the Department of Beni managed to incorporate part of their demands into the agreement. They managed to obtain resolutions that led to the initiation of the *saneamiento* process for the Multiethnic and Mojeño-Ignaciano (TIM and TIMI) territories. They also obtained a precautionary immobilization measure that prohibits new settlements and the titling or awarding of land to non-indigenous people.

In the Isiboro Sécure Indigenous Territory and National Park (TIPNIS), the *saneamiento* of an area totaling 30,000 has. has been concluded. Third parties had sought to gain land rights to all of this area. In the end, the communities consolidated slightly more than 24,000 has., and they continue to believe that their entire territorial claim (1,236,296 has.) will be consolidated, given that it is categorized as both a national park and indigenous territory. However, a wealth of timber resources and biodiversity has made this area very tempting for landowners and land traffickers as well as exploiters of timber and natural resources. Although INRA has resources for the reorganization of two more areas, it has not included this territory in its schedule.

The Day after the March: Regressive Proposals

It has already been noted that many of the agreements obtained by the third indigenous and peasant march have been implemented. On the other hand, others have not.

The Vice-Ministry of Indigenous Affairs and Native Peoples, which became a Ministry after agreements were reached between the government and the peasant movement in October, has bypassed the changes to the regulations governing the law. These changes had eliminated its capacity to recommend the surface area to be titled for indigenous communities. It continues issuing such recommendations and substantially reducing the areas claimed. The territories now being affected are those in the southern Amazonian region.

In addition to this non-fulfillment of agreements, an entire process of counter reform has begun in order to revert legal changes obtained by the march and promote new rules directed towards recovering preferential treatment for certain sectors in the land titling process.

First, before the end of the year, a law was introduced in parliament that was to recover the benefits of the annulled *barraquero* decree.

Then, a proposal was presented to the *Comisión Agraria Nacional* (CAN, the National Agrarian Commission) to regulate the number of hectares per head of cattle. This proposal would be applied to cattle ranching properties throughout the land titling process. In accordance with this proposal, for each head of cattle[9], ranchers would be awarded from 6 has. in the humid tropics up to 47 has. in the Chaco region.

Finally, the CAN was presented with a decree that intends to revert all the changes to the regulations of the INRA law. Besides giving back to the Ministry of Indigenous Affairs the capacity to recommend surface areas to be titled for indigenous peoples, it reauthorizes INRA to be able to declare State lands as forestry concessions. It also restores legal provisions that favor the consolidation of properties by third parties who do not possess rights and proposes to change the minimum amount of land to be titled for families involved in extractive activities in the northern Amazon. If parliament approves the above-mentioned law, this last measure would pave the way for implementation of the *barraquero* law.

This counter reform process has taken place within a current Bolivian context in which businessmen have taken a prominent role in national public opinion by demanding that the government implement specific measures to attenuate the serious economic crisis, which has particularly affected the agricultural sector.

If the previous regulatory proposals are approved and implemented, cattle ranching activities would be legalized, northern Amazonia would be surrendered to *barraqueros* and forests to loggers, and there would be no land left for native peoples, peasants and poor settlers. Such a situation would extend and consolidate the excessive concentration of rural property and the age-old poverty of rural communities.

The organizations are attentive to what can happen. When the third march ended, the organizations made a commitment to continue a united struggle to defend their rights, and they have already announced new mobilizations for the first months of the year.

Notes

[1] This organization brought together peasants, industrial and transportation workers, and urban and rural civic committees from the Department of Cochabamba.

[2] Translator's note. In Bolivia, private individuals, businesses or non-indigenous peoples occupying or with a claim on lands inside indigenous territories are known as third parties (*Terceros*).

[3] Based on official data, in global terms, of a total of 11,047,988 has. immobilized as part of the titling process of indigenous lands, VAIPO recommended titling 8,401,484, that is, 24% less.

[4] Translator's note. *Barraqueros* is the name given to owners of *barracas* in Bolivia. At the beginning of the 20th century *barracas* were rubber extraction concessions. Later, when the rubber boom ended, they focused on extraction of brazil nut. *Barracas*, in effect, functioned like *haciendas* where workers toiled as peons. The size of these *barracas* ranges from 5 to 30,000 hectares.

[5] These *barracas* functioned as places for the storage and processing of brazil nuts and rubber. According to INRA, at the beginning of 2000, after the enactment of Supreme Decree 25532, 240 *barraqueros* had requested a total of 3,400,000 has. as forestry concessions.

[6] Translator's note. *Saneamiento* is a procedure through which INRA measures, demarcates, and investigates the legal standing of rural properties. *Saneamiento* is but one component of the titling process of indigenous peoples' territories. As the term has no equivalent in English, the Spanish term is used throughout the text.

[7] Between October and December 1999, four Ayoreo territories were titled, with a total area of 244,736 ha. as well as an area of 413,000 has. of the Guarayo territory. The total area of the Guarayo territory is 2,205,369 has.

[8] In May, the Supreme Court of Justice issued a decision that put an end to objections presented by indigenous organizations in 1998 against the granting of forestry concessions inside their territories. This decision indicated that concessions should be reduced by the necessary amount in order to title indigenous territories.

[9] This is equivalent to 400 kg., which is the average weight of a mature head of cattle.

PARAGUAY

Socio-Political Context

Following the events known as the *Paraguayan March of 1999* (which included the assassination of Vice-President Argaña, 7 dead and hundreds wounded in public demonstrations, and the political trial and resignation of the then President Raúl Cubas) the Government of National Unity emerged, led by the Colorado Party and made up of the other most important political parties. Expectations for change following the acute political and social crisis have been increasingly frustrated by this government's performance.

For example, it has undergone several face changes and reformulations; the Liberal Party, for example, withdrew in the first half of 2000 only to join once more, winning the elections for the Vice-Presidency in August of that year.

This crisis of political actors has impacted on the social players, who gained few answers to their demands. The public fund deficit gradually increased to the point where the government, at the end of the year 2000, did not have enough funds to cover ongoing expenditure. From that point on, structural adjustment, so fashionable in other Latin American countries during the 1990s, was called for by various industrial and business sectors as the means by which to resolve the situation. The government and the political class have echoed this position, and various measures have been taken with which to embark upon the so-called "Reform of the State" which, in principal, envisages the privatisation of public companies, an increase in the price of basic services, the reduction and/or elimination of public expenditure, etc.

The Paraguayan Indigenous Institute (INDI) has been included amongst those organisations which - due to their excessive size, corruption and scarce social productivity - are to be reformed or eliminated. Put to the test, probably no State institution could pass the requirements for effectiveness and transparency but, undoubtedly, in the eyes of the government, some cutbacks have less political cost because of who they affect.

An Indigenist Policy of Denial

Whilst the President of INDI at the beginning of 2000, Mrs. Leni Pane de Pérez Maricevich, had indigenist experience, her administration was misguided and negative in relation to the interests of indigenous peoples. This management team commenced with a budgetary cut (see further on), which Mrs. Pane came to terms with as an important and determining but not absolute factor. Nonetheless, 2/3 of the scarce funds for land restitution were misappropriated through the purchase of overvalued land. To this had to be added the arbitrary management of the institution, which earned it the opposition of it's Council. INDI's internal conflicts went beyond this and the government sought to settle the discontent by dismissing Mrs. Pane and replacing her with Mrs. Olga Rojas de Báez, at that time a member of the opposing Council.

Mrs. Rojas, the eigth President of INDI since the start of the Paraguayan transition (1989), took up her post on 17th September 2000 with the promise to defend indigenous territories, fight for a fair budget and encourage the communities' self-sufficiency. However, her good initial intentions and even her open support of conflictive cases, has brought no advances to the indigenous situation.

In order to understand the government's current indigenist policy, we need to look beyond the changes in management within INDI, and take into consideration the following indicators: the budgetary cuts for land purchase during 2000 and 2001; the rejection of a request to reprogramme the land purchasing budget made to the Treasury Department in May 2000; the refusal to expropriate historical land claims in Parliament; funding for INDI's organisational running costs budgeted only until June 2001; and, finally, the presentation, by the Department for the Reform of the Executive Power, of a draft bill amending Law 904/81, considered unconstitutional and in contrary to indigenous rights, which should be considered by Parliament next March.

In the first place, the allocation of funds for the purchase of lands claimed by the indigenous peoples was reduced - initially - by more than 50% from 1998 to 1999, then by 84% from that year to 2000 and **by another 40% for 2001**, leaving it reduced to a sum of approximately US$400,000 at the current exchange rate (this amount could resolve hardly 1% of the current territorial claims). In other words, the latest cuts (2000-2001) more or less constitute the final blow in a series of cutbacks aimed at the effective disappearance of INDI.

The rejection and withdrawal of various projects for the expropriation of lands in favour of indigenous communities (see further on) by both chambers highlights the fact that Parliament has had no qualms in flagrantly violating the constitutional and legal mandate for restitution of lands to indigenous peoples. In opposition to these demands, the Paraguayan Rural Association (ARP) - the cattle farmers affected and politicians close to their interests - in alliance with the media, undertook a campaign to delegitimise the land claims and their justification, deeply insulting the organisations linked to the indigenous people and presenting the large estate owners as the victims.

In accordance with what was envisaged in the draft bill from the Reform Department, INDI will have to be substituted - in theory as of July 2001 - by a Department for Indigenous Affairs of lesser administrative status. This draft also stipulates the transfer of human and financial resources to the provincial governments and a reduction in the minimum land basis that can be demanded from the State on which to maintain indigenous families.

On top of these negative indicators, there are other equally serious situations: the indigenous migration to the towns - or rather to their rubbish dumps - through the dispossession of and/or insecurity on their lands; the exploitation of labour; the sale of private lands to the Moon Sect, which affects the territories of the indigenous peoples of Upper Paraguay (and even half of a national Municipality); the threat of megaprojects indifferent to or excluding indigenous rights and interests, such as the "*Corredores de Integración*" (Integration Corridors) project of the Inter-American Development Bank (IDB), the Project for the Sustainable Development of the Chaco (PRODECHACO), the Waterway and others. All these are phenomena and circumstances that point to a deterioration in the living conditions of indigenous peoples.

Finally, faced with the prospect of a generalised violation of their rights on the part of the State, indigenous people have increased their involvement in the public sphere, expressing their demands with increasing clarity and firmness through different organisational initiatives and before different authorities, beyond the sphere of the traditional leaders. Of these, the following can be mentioned: *Coordinadora de Líderes del Bajo Chaco* (the Coordinating Body of Leaders of the Bajo Chaco), the *Asamblea de Pueblos Indígenas* (the Indigenous Peoples' Assembly), the *Organización Nacional Aborigen* (the National Aboriginal Organisation), the *Unión de Comunidades Indígenas de la Nación Yshyr* (the Union of Indigenous Communities of the Yshyr Nation - UCINY) and, in particular, for their newness and distinctive nature, two political movements in the Chaco. The first to organise was the *Movimiento Indígena 19 de Abril* (Indigenous Movement of the 19th April), which launched its Religious Political Council on 12th October 2000 in the department Presidente Hayes; and the *Movimiento 11 de Octubre* (11th October Movement) whose headquarters are in the department of Boquerón but which has still not been officially launched. Both movements are made up of people from different indigenous peoples.

The Coordinating Body of Leaders of the Bajo Chaco has repeatedly denounced the Provincial Administration of the Department of President Hayes for embezzlement of funds and manipulation of indigenous peoples in its actions aimed at them. The UCINY managed to obtain agreements with the government for the exclusive stockpiling of caiman skins, thus avoiding exploitation at the hands of non-indigenous middlemen. The 19th April Indigenous Movement gained wide publicity at its launch and its members claim to be seeking an indigenous politics outside of traditional electoralism.

BEST COPY AVAILABLE

Indigenous Territorial Demands

In spite of a clear and favourable legal framework for the restitution of lands to indigenous peoples and the relative simplicity of their solution in financial and political terms, the State has made no progress in this regard over the last few years. On the contrary, it has tended to simply deny the problem. Today, for example, the indigenous peoples of the Chaco are claiming scarcely 3% of their territory (in round figures approx. 750,000 hectares) and those of the eastern region less than one quarter of this area, the purchase of which - from the private individuals holding them - would cost no more than US$50 million.

By way of example, it is worth noting recent and relevant events that serve to demonstrate the generalised violation of indigenous territorial rights:

The process of cutting back INDI's budget for land acquisition, INDI's disappearance and the possible creation of an unconstitutional State indigenist body

The draft bill from the Reform Department is the final nail in the political coffin of INDI, and clearly seeks to overturn the achievements gained in legal terms by indigenous peoples and their allies. This law, for example, reduces the minimum quantity of hectares the State must return to each indigenous family (from 100 to 50 hectares in the Chaco, from 20 to 10 hectares in the Eastern Region) which, on the one hand, contradicts the National Constitution itself where it mentions the return of land to the indigenous peoples *"in sufficient quality and quantity for the preservation of their particular ways of life"* (Article 64) and, on the other, seeks to legitimise the current situation of lack of compliance with the minimum requirements for territorial return.

The approval and/or acquisition of unclaimed lands and irregularities with regard to their processing

One example is the Paso Itá S.A. case, of around 1,350 hectares located in the Horqueta district, department of Concepción. Mrs. Pane ordered two payments for these lands to the Treasury Department for a total of Gs. 1,000 million (U$S 280,000). The cost per hectare approved by INDI was 7 times greater than that established by the Institute for Rural Welfare (IBR) for lands in the area.

The National Parliament's rejection of proposals to expropriate indigenous territorial claims

The most significant violations and acts of an arbitrary nature have been committed at parliamentary level given the importance of this

BEST COPY AVAILABLE

authority and the consequences of the positions and decisions adopted by the senators and deputies.

Firstly, the example of the Xakmok Kásek (10,700 hectares) and Sawhoyamaxa (14,404 hectares) communities can be given. Both submitted their demands to Parliament in June 1999, after 9 and 8 years of wasted administrative procedures due to the intransigence of the owners in selling the claimed lands. From that point on, an innumerable number of humiliating events took place for both communities: only one group of commission members visited the communities in the first place; almost one year later and due to a demonstration on the part of the communities in Asunción, the Agrarian Reform Commission issued a favourable report on both cases and, then, because of the insulting campaign and lobbying against the decision, headed by the cattle farmers in question, the commission decided to postpone dealing with the cases and to undertake a second visit. During this visit, the indigenous people had no time to put forward their concerns and the parliamentarians decided in favour of the cattle farmers' arguments. The commission subsequently issued another report, this time with a majority against (several members radically changing their initial position) and, finally, the Senate rejected both requests on 16th November 2000.

Another two expropriation projects, that of the *Ayoreo Totobiegosode* (78,000 hectares) submitted to the Senate and that of the *Enxet* of *Yakye Axa* (18,186 hectares) submitted to the Chamber of Deputies, had to be withdrawn due to negative reports.

The government's lack of preventive and dissuasive measures

The government has taken no preventive or dissuasive measures to prevent the occupation of indigenous lands - guaranteed or being processed - on the part of poor peasants or to defend the indigenous environment from depredation at the hands of third parties.

The emigration is due to the fact that lands, mainly of the *Mbya Guaraní* people of the department of Caaguazú, were invaded by landless peasants or unscrupulous logging companies, encouraged by agents from the Colorado Party. The Police and Ministry of the Interior have been reluctant to ensure respect for the judicial measures that protect the indigenous lands in question and to apply orders for eviction of the illegal occupants.

BRAZIL

A Tumultuous Year for the Indigenous Peoples in Brazil

The year 2000 was a tumultuous one for the indigenous peoples in Brazil. The government of Fernando Henrique Cardoso proved unable and unwilling to render effective solutions in order to grant the indigenous people a dignified and safe existence within Brazilian society. The present delays in the demarcation process, due to ongoing Parliamentary Committee Inquiries (CPIs) into FUNAI and NGOs in Brazil as well as military repression against legal indigenous demonstrations also point in that direction. On the other hand, the social mobilisation generated in the wake of the indigenous march in April against the official commemoration of Brazil's 500 years has strengthened the grassroots of the indigenous movement. It should also be acknowledged that the indigenous population in Brazil is growing once again and that new international programs for the protection of indigenous lands, such as the Project for the Protection of the Indigenous Lands and Populations of the Legal Amazon (PPTAL), an initiative financed by the G7 countries, have inspired new faith among indigenous leaders that the demarcation process will go forward despite official resistance.

The Indigenist Policy and its Permanent Crisis

The designation of Carlos Frederico Marés as the new president of the National Indian Foundation (FUNAI) in November 1999 raised hopes of a more just and pro-indigenous policy. Marés declared that he would only assume the post on the condition that the Raposa/ Serra do Sol indigenous reserve (among others) was immediately ratified. During the first months of his presidency, he developed the proposal for a new Indian Statute, which was handed over to the indigenous organisations during their protests against the commemoration of Brazil's 500 years. Sympathising with the indigenous protests, he declared himself in opposition to the official commemoration of the 500 years anniversary of the "discovery" of Brazil, and eventually resigned as a reaction to the violent repression by the military police (MP) against the indigenous march towards Porto Seguro on the commemoration day. He was eventually replaced by Glênio Alvarez, who became the 27th president of FUNAI since its foundation in 1967. This disheartened the indigenous organisations as Alvarez showed less willing to speed up the demarcation process.

The Indigenous March and Protest against the Commemoration of Brazil's 500 Years

The indigenous march was initiated at the beginning of March 2000, with caravans forming all over the country and heading for Porto Seguro in Bahia, the site for the official commemoration of Brazil's 500 years. The march was organised by the "Comitê Outros 500", consisting of members from CAPOIB (The Coordinating Council of Indigenous Peoples and Organisations of Brazil) and CIMI (The Indigenist Missionary Council) as well as independent indigenous leaders. More than 3,000 participants representing 140 different peoples from 21 states in the country held demonstrations and speeches in 23 major Brazilian cities before uniting in Coroa Vermelho, where the "Conference for Indigenous Peoples and Organisations of Brazil" was held.

The Indigenous Peoples' Conference

This Conference was attended by approximately 3,000 Indians, the largest number ever to attend a conference. Besides condemning the continuing invasion of indigenous lands and the extermination of indigenous peoples, the final conference document also indicated new directions for indigenous resistance, emphasising the importance of building a broad alliance uniting indigenous, black and popular movements against the injustices of Brazilian society.

The principal demands of the indigenous peoples to the Brazilian State presented in the final document were:

- The fulfilment of indigenous peoples' rights as guaranteed in the federal constitution:
- The demarcation of all Indigenous Lands (TIs) before the end of the year 2000.
- The withdrawal of invaders from all demarcated lands, compensation for and recovery of degraded areas and rivers.
- Recognition of the resurgent[1] peoples and their territories.
- Protection of the isolated[2] peoples' territories against invasion.
- Respect for the indigenous peoples' exclusive right to the usufruct of all natural resources contained in the indigenous areas, with special attention to bio-piracy.
- A halt to the constructions in progress of hydroelectric projects, power lines, waterways, railways and highways, and compensation for the damage caused by projects undertaken so far.
- The end of all forms of discrimination, expulsion [illegible]

Clash between military police and Indian protesters. Photos: J.Rocha

Tariano group presenting a ritual during the "Week of the Indigenous Peoples, Manaus" Photo: Christian Groes-Green

Indian protest march. Photos: J. Rocha

BEST COPY AVAILABLE

threats, acts of violence and impunity. Immediate investigation into all the crimes committed against the indigenous peoples over the past 20 years and punishment of those responsible.
- That the true history of Brazil be acknowledged and taught in State schools, taking into consideration the thousands of years the indigenous population have occupied the diverse lands called Brazil.
- That the indigenous peoples elect the president of FUNAI after recommendations from the regional organisations.

Official Repression and Violence

On April 22nd - the final day of the indigenous conference - the indigenous caravan was prevented access to the celebration area in Porto Seguro where it was supposed to join black and popular caravans and make a speech to the nation and the Head of State, Fernando Henrique Cardoso. On the direct orders of Cardoso, the Military Police opened fire and injured seven Indians, also arresting 140 sympathisers from the black and popular movement. In response to the aggression, indigenous demonstrators ripped their "white man's" clothes off and threw stones at the MP officers.

The year 2000 was, in general, characterised by violence against indigenous peoples. In Mato Grosso do Sul, farm owners shot two *Guarani-Kaiowá*, and wood workers in the same region assassinated a *Nambikwara* boy. In Acre, at least three unidentified Indians were murdered, allegedly by a city councillor. Among the *Yanomami*, the indigenous leader, Davi Kopenawa, reported that army soldiers had raped young girls and caused gonorrhoea epidemics. In Pernambuco, the federal police invaded the indigenous Truká area with helicopters and buses, arresting and beating up several individuals, claiming that they were involved in drug trafficking.

The reactivation of the military "Calha Norte" project in the Amazon has also caused fear and insecurity among the indigenous peoples in the region. The widespread military presence, the aim of which is to gain geopolitical control over the region, exposes many isolated peoples to harmful contact. The federal government justifies the choice of the Amazon as strategic region by asserting the need for an effective defence of the natural resources against foreign military invasion and exploration. In indigenous areas in the State of Amazonas, there have been reports of military personnel sexually abusing the women, distributing alcohol and entering indigenous villages without permission.

The New Indian Statute

The proposal for a new Indian Statute, worked out by FUNAI President Marés, was approved by the influential Amazonian organisations in April but fierce critique from indigenous leaders from the central and eastern parts of Brazil, in agreement with CIMI, made FUNAI suspend the proposal. The Federal Executive is now processing an alternative proposal but the key question is whether or not the regional indigenous organisations can come to an agreement. The problem is that the Amazonian organisations, under the co-ordination of COIAB (CoordenaVão das OrganizaVões Indígenas da Amazônia Brasileira), believe that compromising with the government is the only way to influence its indigenist policy. Indigenous organisations from the central and eastern regions, however, emphasise the clear deterioration of the Indian Statute in comparison with the draft law from 1991 and the 1973 Statute in force. *Kayapó* and *Xavante* representatives, for example, refuse to accept the clause in the present draft that impedes unlimited prospecting by indigenous people and the clause dealing with the limitation of the FUNAI tutelage, upon which both of these groups are particularly dependent, as well as the clause that deprives so-called "acculturated" Indians of their right to impunity.

Indigenous Health

The Pro-Yanomami Commission (CCPY) reports that the Yanomami experienced severe health problems during the year 2000. Of particular concern was the immigration of ill Yanomami families from Venezuela. Uhiri, a non-governmental health organisation, found 453 of these immigrants with serious illnesses such as malaria, acute respiratory infections and dermatological diseases. This immigration process, caused by a lack of health services among the Yanomami in Venezuela, is disastrous, firstly, since the immigrants have to undertake exhausting walks and cross Yanomami areas where they are not welcome, which puts them in an extremely vulnerable situation. Secondly, because these desperate immigrants might be the transmitters of dangerous diseases, which could have catastrophic consequences for the Brazilian Yanomami areas.

Demarcation of Indigenous Lands

Only five indigenous lands comprising merely 149.276 hectares were demarcated in the year 2000, making it the second worst year in terms of demarcation for the last ten years. In March 2001, the general juridical-administrative situation regarding the *terras indígenas* (TIs) in Brazil was as shown below:

Legal situation	**No (number of TIs)**	**HA (hectares)**
To be identified	135	
Identified	16	2,275,007
Delimited	55	10,394,545
Demarcated	19	1,917,403
Ratified	34	10,376,906
Registered	321	76,297,577
Total	580	101,261,438

Out of a total of 580 TIs in Brazil, so far more than 60 per cent have been demarcated covering an area of 76,297,577 hectares, which corresponds to 12.3 per cent of the area of the national territory. More than two thirds of the total number of concluded demarcations have occurred within the last decade.

FUNAI anticipates the demarcation of 34 TIs during the year 2001, 17 of which will be demarcated with resources from the G7 countries' PPTAL program. In the State of Amazonas, 12 lands inhabited by the *Kokama, Munducuru, Tucuna, Apuriña, Mura, Tenharim,* and *Torá* peoples will be demarcated. In the State of Roraima, the demarcation of *Macuxi* and *Wapixana* lands is expected, as is the demarcation of the *Munducucu* territory in the State of Pará. This does not mean that the process of demarcation will proceed without severe obstacles in years to come. By way of example, the year-long impasse regarding the demarcation of the Raposa/ Serra do Sol area inhabited by approximately 12,000 Indians was not solved in the year 2000. Local farm owners and prospectors (*garimpeiros*) working in the indigenous areas, as well as the State Government of Roraima and rightwing politicians in the Senate are joining forces to suspend the demarcation process. Farmers and prospectors claim their right to stay on certain lands in the area, and agitate for the decree signed by the Minister of Justice in 1996 suggesting a 300,000 hectare reduction of the area originally identified by FUNAI as covering 1,6678,800 hectares.

A more general problem regarding the demarcation process in Brazil is that few resources are available to finance the demarcation of TIs outside of the Amazon. This is because, at the moment, the only solid source of funding at FUNAI's disposition is the resources available from the PPTAL program, all of which are aimed at the Amazon region. Political interests in the mineral resources are the

Sateré-Mawé selling their handicraft during the "Week of the Indigenous Peoples", Manaus.
Photo: Christian Groes-Green

primary reason for the general delay in the process of demarcation. In collaboration with the right wing deputies making up the "Amazonian Faction", the Federal Senate has set up a CPI of NGO activities in Brazil justified by an alleged fear of internationalisation of the Amazon. The objective of this absurd initiative is obviously to hinder the international support of indigenous and environmental interests in the country thus facilitating access to minerals and other resources in the indigenous and nature reserves. Notably, the "Amazon Faction" approved the report, which concludes the CPI of FUNAI suggesting that:

- The limits of the TI Raposa/Serra do Sol should be revised by segmenting the indigenous areas out of respect for the lands of local landowners and occupants.
- Inquiries should be made into the activities of the Centre for Indigenist Work (CTI).
- Future ratifications of demarcations should be scrutinised by the National Congress.
- Inquiries into the partnership between Indians from the TI Raposa/ Serra do Sol and NGOs should be initiated.

These anti-indigenous initiatives are linked to the approaching implementation of "Avança Brasil", a huge development program made up of dozens of major infrastructure projects intended to accelerate economic development in terms of industrial agriculture, timber and mining activities. According to an article by William F. Laurance et al. published in *Science,* the Brazilian Government's investment of more than $40 billion over the years 2000-07 will be used on highways, railroads, gas lines, hydroelectric projects, power lines, and river-canalisation programs. Should this program be completed it will have catastrophic consequences for the indigenous peoples in Brazil and their environment.

The Brazilians' Attitude towards Indigenous Peoples

A comprehensive national inquiry carried out in February 2000 by the Socio-Environmental Institute (ISA) reveals that the vast majority of the Brazilian population acknowledges indigenous rights and supports the demarcation of indigenous territories. For example, 82 percent of the population believes that the federal government ought to act to prevent the extinction of indigenous peoples and to promote their defence. In spite of the Brazilian State's lack of will to defend indigenous interests, and its continuing repression of its indigenous peoples, the population's attitude points towards the possibility of a future climate of respect and coexistence between the different societies.

Notes and Sources

[1] Resurgent is the expression used to designate indigenous groups that had been considered extinct, disappeared or non-existing but that somehow have resurfaced and have been rehabilitated.

[2] Indigenous peoples living in voluntary isolation or who are believed never to have been contacted.

Boletim Yanomami, No. 12, 25/04/01.
Brasil Indigena, No. 21, April 2001.
Coordenação das organizações indígenas da Amazônia Brasileira, COIAB (nd.): *Relatório da marcha indígena 2000.* COIAB, Manaus.
Conselho Indigenista Missionário, CIMI (2001): *Marcha e conferência indígena.* CIMI, Brasília.
Conselho Indigenista Missionário, CIMI (2001): *Agora são outros 500.* CIMI, Brasília.
Conselho Indigenista Missionário, CIMI (2001): *Situação jurídico-administrativa atual das terras indígenas no Brasil.* CIMI - Secretariado National, Brasília.
Conselho Indigenista Missionário, CIMI, homepage: www.cimi.org.br.
Fundação National do Indio, FUNAI (2001): *Terras indígenas tradicionais - procedimento demarcatório.* DAF - FUNAI, Brasília.
Instituto Socioambiental, ISA (2000): *Povos indígenas no Brasil: 1996-2000.* Instituto Socioambiental, São Paulo.
Instituto Socioambiental, ISA, homepage: www.socioambiental.org.
Porantim - Em defesa da causa indígena, No. 229, October 2000.
Porantim - Em defesa da causa indígena, No. 230, November 2000.
Porantim - Em defesa da causa indígena, No. 231, December 2000.
Science, Vol. 291, January 2001.

ARGENTINA

A new government in Argentina, new authorities in the National Institute for Indigenous Affairs, new directives, new ideologies. But what results have there been?

Back-Pedalling in State Indigenism

In spite of the fact that the country is witnessing a resurgence in the indigenous movement, Argentina's political leaders continue to ignore this. During the year 2000, the new authorities of the National Institute for Indigenous Affairs (INAI) thus submitted a programme of action that merely harks back to the old integrationist/developmentalist ideology of past decades. Consequently, a clear back-pedalling has taken place in State indigenism: programmes and activities that were being implemented have been brought to a standstill and the approval of others has been unacceptably postponed, highlighting the fact that this country has still not adopted a consistent policy for the indigenous peoples living within it and that everything is approached without prior planning and with no respect for indigenous rights. And so, when the civil servants change not only do the policies change but also the ideologies and principles on which they are based. It seems that Argentina's political leaders "don't know what to do with the indigenous". Consequently, cyclically, "indigenous affairs" remain subordinated to the swings of party politics, accentuating a clientilistic dependence and welfarist paternalism. And so, whilst other citizens have a number of organisations through which to make their demands, the indigenous have only INAI.

Convention 169:
Neither indigenous consultation nor indigenous participation

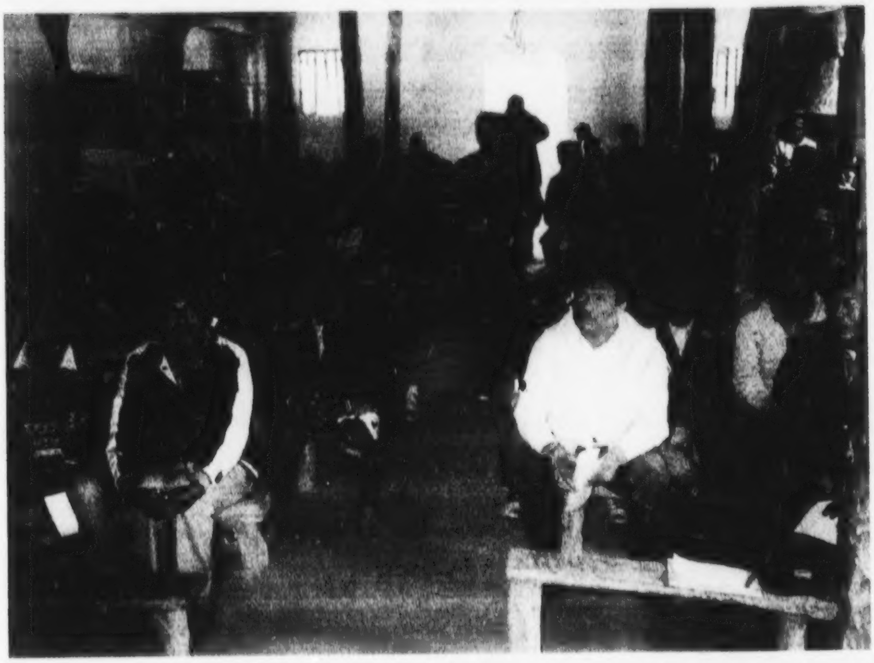
In fulfilment of indigenous hopes, although in terms of the above this could seem paradoxical, the Argentinian Foreign Office ratified ILO Convention 169 in July of last year, in response to a demand that had been extensively reiterated by indigenous organisations.

However, whilst the National Constitution and Convention 169 prescribe the necessary consultation and participation of indigenous peoples with regard to all areas that affect their lives, this was not respected during the year in question. A few examples serve to illustrate this: 1) Fifteen years after passing the law that created INAI, and as a result of a legal ruling regarding a request that was to initiate the Indigenous Association of the Argentinian Republic (AIRA), in August 2000 a presidential decree provided for the immediate regularisation of INAI as a decentralised body with indigenous participation and its own budget. Several months passed, and the Institute was still under the control of the Department of Social Development, with no indigenous participation and with the aggravating factor of a significant reduction in the budgets allocated to it. Of these, only 20% had been implemented by the end of the financial year. 2) The absence of indigenous consultation and participation can be demonstrated by a health programme that was implemented without the beneficiaries even having had the chance to give an opinion in its regard. On 24th July, the Ministry of Health submitted to the President the "*Programme of National Support to Humanitarian Actions for Indigenous Populations*" (ANAHI), which "will implement the article of national indigenous law 23302 that guarantees the indigenous populations' right to health". In summary, the programme consists of the establishment of a primary health care system based on the work of indigenous community health agents. A system which, albeit with shortcomings, had already been implemented for a number of years. For this reason, in practice this meant no more than a change in name and a replacement of the people in charge. Apart from this, the decree creating this programme provided for the functioning of a Consultative Council in which not one indigenous representative has participated. The members of this Council met four times during the year but have still not been able to establish a programme to take forward. Nonetheless, a number of employees collect a salary for their "work" within ANAHI.

A Review of INAI's Management during the Year 2000

Programme of regularisation of indigenous lands

There are three agreements signed between INAI and the provinces of Chubut, Río Negro and Jujuy, which provide for budgetary contributions to the parties in question. This programme forms part of the spectacular announcement - made in 1996 by President Menem - that 2,000,000 hectares of State lands would be returned to its legitimate owners. Four years on, the results have been poor. In 2000, some provinces made progress on their own, as INAI systematically failed to ensure the policy of land regularisation.



Meeting of the Lhaka Honhat General Council of Caciques, San Luis, Salta Province, Argentina
Photo: Morita Carrasco

Bulldozer destroying the burial grounds of the Wichis living in Hoktek T'oi village, Salta province, Argentina. Photo: John Palmer

BEST COPY AVAILABLE

Management priority for 2000: student grant programme

In line with the integrationist/developmentalist ideology that characterised INAI's conduct over this period, the most important activity, and that which took up a major part of the resources - to the detriment of other programmes such as the land programme, so unjustly postponed - was the implementation of a system of grants for secondary school and university students. This system consists of granting a monthly stipend (US$60 for secondary school level and US$200 for university level) to young indigenous people so that they can achieve better integration into the formal State education system under the supervision of a tutor. Following a complex and extended selection process, 1,354 grants were awarded to secondary school students, many of which were still unpaid as of December 2000.

International development cooperation in indigenous communities

INAI is the local counterpart in three programmes that have international funding from different sources and which each have different methodologies.

The "Ramón Lista Integrated Development Programme" (DIRLI): Through an agreement with the European Union (US$8,000,000 over four years with national counterpart funding), this programme is being implemented in the Province of Formosa. Its goal is: "to improve the living conditions of Wichí communities, on the basis of the activation of an endogenous and self-sustained development process that targets the protection of their cultural identity." Following stagnation caused by a delay in the funds being made available, the programme was initiated, giving priority to improvements in housing and water provision with funds provided by the provincial state. The Wichí population benefiting from this programme is approximately 6,000 people..

The "Attention to Indigenous Peoples Component" (CAPI) of the Programme of Attention to Vulnerable Groups of the Inter-American Development Bank (IBD) (approximately US$4,000,000 over four years with national counterpart funding) is being undertaken in three provinces: Jujuy, Salta and Chaco. It covers communities and organisations from different indigenous peoples. Its main objective is: "to strengthen the operational management capacity of grassroots and intermediary indigenous organisations." So far, social appraisals have been carried out, training meetings have been held on legal status and project design and specific projects have been initiated in some communities.

The "Indigenous Community Development and Biodiversity Protection Project" receives funding from the World Bank (US$6,000,000 plus national counterpart funding) and its aim is to strengthen the indigenous communities in chosen pilot areas with an emphasis on "sustainable development with identity" and, secondly, to discuss alternative forms of legal support to protected areas. The project has been at a standstill since October 2000, waiting for the President of the Nation to pass the respective decree for final approval. As of the beginning of 2001, the programme's future is uncertain, for if the stated decree is not passed, the Bank may decide not to continue with the programme.

Recognition and Defence of Rights

The Catholic Church

On the 12th May 2000, an official document from the Catholic bishops, referring to the National Constitution recognising the right to community possession and ownership of lands on the part of aboriginal groups, championed an "acceleration of the devolution of lands to the indigenous peoples, whether State lands or private".

Ordinary law

The lack of application of constitutional rights has led indigenous people to resort to legal paths to submit complaints. And, surprisingly for a country with such little respect for cultural differences, during the year 2000 some judges issued encouraging decisions for the recognition of their rights. These included the following:

In the Province of Neuquén, a Mapuche community achieved the right to receive a bilingual education, a Mapuche language and culture teacher joining school No. 319 Paraje Aucapán Abajo. Through this case law, it was expressly recognised that Argentinian indigenous communities have a right that can be legally requested and which must be satisfied by the State.

In the Province of Santa Cruz, a family from the Tehuelche people came out on top in a century-long legal dispute for recovery of their territory. The judge in the town of Río Gallegos passed judgement that, following five years of forced absence, the Tehuelche could return to their ancestral home. This case marked, for the first time, the application in Santa Cruz of the 1994 constitutional reform guaranteeing property rights over indigenous territories.

Violations, Threats and Attacks on the Physical, Territorial and Cultural Integrity of the Indigenous Peoples

Occupation of indigenous lands

Land occupations continue in a number of different provinces, without the slightest respect for indigenous land rights. The communities of the Mapuche people in the provinces of Río Negro and Chubut, in particular, have had to repeatedly denounce violations of their rights to the courts and demand their respect. By way of example, we quote the following:

Within the context of aggressive proceedings, the members of the families forming part of the "Vuelta del Río" Mapuche community, the largest aboriginal reserve in Chubut, created in 1899 by presidential decree, are being pursued through the courts following a formal complaint of misappropriation presented in 1994 by the descendants of a landowner of the area, who claim ownership of the lands traditionally occupied by the Mapuche. The community, made up of 25 families, have no electricity and no school, they live in poor housing on 15 plots of 625 has each..

In the Province of Río Negro, the Kom Kiñe Mu - Arroyo Las Minas - community is faced with proceedings for their removal. In order to defend their right, they submitted an administrative appeal denouncing the illegitimate action of the Provincial Department for State Lands, pending resolution in the Supreme Courts.

In the Province of Salta, the Hoktek t'oi community of the Wichí people finds itself cornered onto 27 hectares, suffering the depredation of its environment by a forestry company. A request to expropriate these lands (approximately 3,000 hectares of their traditional territory of 75,000 has.) and put a ban on the company, Los Cordobeses S.A, is currently going through the National Congress. This company was trying to evict them from an extra 17 has. of native forest bordering onto the community.

In the Province of Chubut, the Argentinian army is arguing that it is the owner of the lands of the Prane community, and is endeavouring to evict the Mapuche families from this area.

In the Province of Salta, the Tinkunaku community of the Kolla people cannot use 80,000 has. of mountains where their animals pasture due to the fact that they are faced with a legal procedure for return of the donation, initiated by the Tabacal Seaport Corporation Refinery. In the meantime, the company is seeking to divide the indigenous organisation by buying its members off financially and attempting to confuse them and wear them down so that they denounce their right.

Attack on an indigenous leader

Jorge Santucho, from the Amaicha del Valle community in the Province of Tucumán, was set on fire by the Cruz family. In a dispute over control of the area of the Quilmes ruins, Jorge Santucho was sprinkled with petrol while using the community tractor to seize lands that had been fenced off by this family with no prior consultation. Several years ago, this family had obtained a dubious licence to carry out a hotel undertaking in the area where the important archaeological remains of the Sacred City of Diaguita de Quilmes are located. Following a long period in hospital, Jorge Santucho was able to return to his community.

Oil contamination

In the Province of Neuquén, two Mapuche communities continue to fight a long battle against the Repsol/YPF oil company. In June, members of the two communities decided of their own accord to prevent implementation of maintenance work on installations located in the Loma de la Lata oilfield as a protest at the extension of oil exploitation contracts. They took this opportunity to make an appeal to the provincial authorities to put a stop to the personal, material and cultural aggression they were suffering as a consequence of this company's activities.

Land conflicts in the international arena

The complaint made to the Inter-American Commission on Human Rights by the Lhaka Honhat Association of Indigenous Communities against the Argentinian State because of a lack of environmental impact studies and claiming ownership of their territory in the Salta Chaco continued to be processed. In November, a hearing took place in Buenos Aires between the interested parties, with the president of the Commission in attendance. At this meeting, it was agreed to commence a dialogue process with the aim of formulating a proposal for an amicable solution to be presented to the Commission at the next hearing to be held on 1st March 2001.

CHILE

The year 2000 has been no exception to previous years and, right from the beginning, the newly-elected socialist president Ricardo Lagos and his government were set a hard task in attempting to solve a number of conflicts between the indigenous peoples of Chile and Chilean society - conflicts which, to a large extent, have been inherited from former governments.

At the forefront has been the year long conflict between timber companies and private farm owners on the one hand, and the largest group of indigenous people, the Mapuche Indians in the south of

Chile on the other (see **Chile** in *The Indigenous World 1999-2000*). The organisations "*Consejo de Todas las Tierras*" and the "*Coordinadora Arauco-Malleco*" have been the moving spirits behind the mobilization all along. The Mapuche demands for the recovery of land and for recognition as a people poses a serious challenge to the forest industry, and to Chile's economy in general, as the industry is a major contributing factor to Chile's economic growth. For this reason, Chilean governments have, in many cases, neglected recognition of the land rights of indigenous people. A case in point was the approval of the Ralco Dam by the former Eduardo Frei government, even though it is being constructed on land defined as indigenous, and will entail the relocation of around 700 indigenous people (see *The Indigenous World 1999-2000*).

As a consequence, the demands of the Mapuche movement had been met with strong reservations from Eduardo Frei's government, even though the 1993 indigenous law in fact gives legal grounds for the claiming of vast areas of indigenous land. In an attempt to maintain political stability, the Frei government had used the State internal security law against the so-called Mapuche "terrorists" in a repressive political action which, in some ways, echoed the days of Pinochet. The government of Ricardo Lagos took over power in a very critical phase of the conflicts, as the negotiations had reached a deadlock and the line of action against the co-called "terrorists" had already been settled.

The Human Rights Situation

The year 2000 has been marked by many conflicts, all of which reflect a general distrust or even hostility towards the Chilean government, and accusations of racism and violations of human rights have been repeatedly propagated by the Mapuche movement. One example was the case of 10 Mapuche leaders and activists who, during February and March, were charged with a number of very serious crimes ranging from arson and timber theft to kidnapping, violation of the national internal security law and the attempted homicide of three security guards working for the timber company Mininco. Among those arrested was the leader of the organisation "Coordinadora Arauco Malleco", Víctor Ancalaf Llaupe, who was arrested for kidnapping and violation of the State internal security law after occupying the Court of Justice in the city of Collipulli on March 28, 2000. The courthouse was occupied in order to protest against the imprisonment of Pedro Maldonado Urra and Luis Ancalaf, who were charged with the attempted homicide of the three security guards.

Mapuche demonstrating on October 12 – the anniversary of Colombus' discovery of America. Photo: Dorthe Kristensen

BEST COPY AVAILABLE

The arrested Mapuche, along with their organisations, denied any responsibility for the homicide attempt. Instead, they accused the timber company, Mininco, of being responsible for the act. That accusation has been given further credence by a written confession from several timber company security guards and read out on the national radio station, Bio Bio, in February 2000 in which they admitted to carrying out acts of assault and vandalism with the intention of blaming the Mapuche movement for the incidents. So far, however, no security guards have been arrested or charged. On the other hand, the arrests of the Mapuche were enforced without hesitation. Afterwards, these arrests were reported as irregular, as one of the confessions was given after 15 days of solitary confinement and torture, while the law permits only 10 days of solitary confinement. This confession, however, became the principal evidence in the charge against the 10 Mapuche. In addition, the families of the arrested, particularly that of Víctor Ancalaf, suffered harassment as well as serious threats, allegedly from employees of the Mininco timber company. Gradually, the Mapuche were conditionally released from prison. The last to be released - in August 2000 - was Víctor Ancalaf, after five months of imprisonment. The serious charges are, however, still being investigated.

Many Mapuche saw this case as an example of the human rights violations repeatedly being committed by the Chilean government. The imposition of the State internal security law in this case was seen as an attempt to avoid confronting the serious historical problems that the Mapuche movement was addressing. The arrest of Mapuche leaders for crimes that had an almost total lack of evidence was regarded as a reflection of the government's wish to stifle the demand for autonomy. Those arrested were therefore regarded as political prisoners. The case was subsequently viewed as proof that the Chilean government primarily serves the interests of strong economic groups, and that the "democratic" laws do not protect the more marginal groups. The radical Mapuche organisations claimed that the repressive politics of the government left them no choice but to respond in a similar way. A new spiral of violence seemed inevitable.

Another case, which was followed closely by the Chilean press during 2000, was the indigenous students' protest against a presumed closing of various student residences for indigenous students followed by demands for improved grants and credit. The student residences, which had never been officially recognized by the Chilean government, were now denounced as a cradle for Mapuche terrorists. On these grounds, the residences were placed under close observation, the electricity was cut, and meals and grants were denied. In protest, the students occupied the buildings of the State Corporation for Indigenous Development (CONADI) in Temuco and Santiago.

Dialogue, Solutions and Limitations

All these conflicts, and many others, are just some of the issues that Ricardo Lagos has had to address during his first year in office. He has done so by trying to establish a dialogue with the Mapuche organisations in order to find some long-term and sustainable solutions.

Wishing to demonstrate his opposition to the Frei government, he announced the creation of a "Commission of Historical Truth" on March 31, 2000. In addition, he initiated a dialogue with the indigenous movement through the establishment of a negotiating table. Mapuche representatives, primarily from the state Corporation for Indigenous Development (CONADI), were invited to participate along with academics, representatives from the Church, businesspeople and others related to the Mapuche people. However, the leaders from the more radical organisations such as the *Coordinadora Arauco-Malleco* and the *Consejo de Todas las Tierras* were not invited, and this caused strong criticism from the outset of the negotiations. The results of the dialogue were published on June 1, 2000. Not surprisingly, the conflict was first and foremost viewed as an economic problem rather than a political one. As the conflict was defined as one resulting from poverty, the measures agreed upon were based accordingly on this premise. In a ceremony in the building of the parliament, "La Moneda", Ricardo Lagos published 16 measures, including:

- The foundation of regional work groups
- Co-operation with indigenous representatives in the establishment of projects
- Grants of 100,000 pesos to 10,000 small farmers (US$180)
- Distribution of 50,000 hectares of land before December 2001, and 150,000 hectares in total during the Lagos period in office.
- The national celebration of the day of indigenous peoples on the 24th June.
- The development of a project regarding constitutional recognition of indigenous peoples.

For the Mapuche organisations, these measures seemed promising but far from satisfactory. The measures concerning the "soul" as it was put, for instance, the national celebration of the day of indigenous peoples, were generally met with satisfaction. This was also the case for the last item on the agenda – constitutional recognition, which is the most crucial issue to the Mapuche Movement.

On the other hand, the fact that the ratification of ILO Convention 169 concerning indigenous peoples had been postponed resulted in strong criticism from the Mapuche organisations. Furthermore, it had not been defined to which of the indigenous peoples of Chile - the Mapuche in the south or the Aymara, Quechuas and Atacameños in the north - the 150,000 hectares of land were to be allocated (*La Tercera,* August 8, 2000). It also proved difficult for CONADI to find plots of land that could be bought with special reference to transferring them to the Mapuche. In addition, the funds for the purchase of land proved inadequate, as prices soon rocketed. CONADI's indigenous adviser, Hilario Huirilef, thus estimated that the US$11,000 that had been granted would be far from sufficient to purchase the targeted 50,000 hectares in 2000 (*El Mercurio,* August 7, 2000). The fact that private landowners were speculating in and profiting from the conflict was difficult to deny. Finally, the case of the Ralco dam had not been dealt with, as Ricardo Lagos had avoided considering the problem by leaving it to the law courts to decide whether the construction of the dam was illegal or not.

In summary, the reactions towards the government measures were quite negative, as they seemed to be improvised rather than in-depth solutions. The attempt to balance neo-liberal politics with international standards concerning indigenous peoples proved very difficult. Instead of solving the conflict, the dialogue seemed to escalate it, fundamentally because the principal demands from the representatives of the more radical organisations had not been dealt with.

The Struggle for an Account of the 'Real' History

During 2000, the extent to which a solution to the Mapuche "conflict" will implicate a rethinking of the historical relationship between the indigenous peoples of Chile and the Chilean nation-state has become more and more evident. In this context, it is interesting to note that the process called "the recovery of territory", which initially seemed to be primarily a protest against the marginalization and increasing impoverishment of the Mapuche Indians, has increasingly been accompanied by efforts to revitalize traditional structures and by a demand for recognition as a people along with the corresponding rights to territory and autonomy. The discussion of what the word autonomy implies, however, has only just recently begun.

However, the majority of politicians continued to deny the political and cultural roots of the problem, reducing it to a matter of economic hardship. In the same line of discussion was the polemic between the historian, Sergio Villalobos, winner of a national history prize, and a number of Mapuche and Chilean academics. On May 14, 2000, Sr. Sergio Villalobos published an article in the newspaper *El Mercurio* in which he depicted the "pacification" of the Mapuche as inevitable, since a meeting between a highly developed culture and a less developed one will always result in the former dominating the latter. Villalobos further proposed the view that, in the case of the Mapuche, this process was indeed a positive one, as it, among other things, brought civilization and "the practice of justice instead of revenge, the practice of monogamy as well as the punishment for homosexuality, which before was a current practice." It was hardly a coincidence that this article was published shortly after the publication of the first results of the dialogue. As such, it could be seen as an example of the Chilean nationalistic discourse, which profoundly conflicts with the demands of the Mapuche organisations. It is hardly surprising that the responses from the Mapuche and academics sympathetic to the Mapuche demands, were very critical. To mediate between these two positions will therefore be a hard challenge for the Commission.

By Way of Conclusion

The objective of the "Commission on Historical Truth" was to establish new forms of indigenous participation as well as to give an account of the true historical relationship between the Chilean government and the indigenous peoples. The measures of June 1, 2000 gave the first guidelines for the work of this commission. In autumn 2000, however, dissatisfaction with the results of the government became increasingly visible. The mobilizations started anew, land was symbolically occupied, and individuals wearing hoods, supposedly Mapuche, were reported to have committed crimes such as attempted homicide, arson and timber theft. Many Mapuche Indians were arrested, which they reported as having taken place with an exaggerated use of violence; people were left wounded and houses were ravaged. However, the Chilean press was primarily concerned with the supposedly "violent" action of the Mapuche, rather than the examples of torture and mutilation that the communities involved in the "conflict" experienced.

As a result, the suspicion that the radical organisations, rather than being in dialogue with the average Mapuche, had been infiltrated by "foreign terrorists" was propagated first and foremost by right-wing politicians, whose vision of Chile as a homogeneous society was threatened by the Mapuche demands. Investigations were initiated with the aim of "revealing" the degree to which foreigners had organised the mobilizations. According to right-wing politicians, the more radically and violently the Mapuche movement sought to propagate its demands, the more reasonably it seemed to deny the demand of "splitting" the country in two which, in their view, would be the consequence of a ratification of ILO Convention 169. Not surprisingly, the parliament, which still has a large percentage of right-wing politicians, definitively rejected ratification of Convention 169 in November 2000.

On January 18, 2001 the commission was renamed the "Commission for Historical Truth and New Treaty". The former president of Chile, Patricio Aylwin, was elected as president of the commission, and leaders from the more radical organizations, among these the leader of the "*Consejo de Todas las Tierras*", Aucán Huilcamán, were invited. However, at the first meeting of this commission on March 12, 2001, the more radical representatives of the movement were not present (*El Mercurio* March 13, 2001).

Sources

El Diario Austral
El Mercurio
El Metropolitano
La Tercera
El Siglo
El Sur
See also project **Nuke Mapu**, http://www.soc.uu.se

AUSTRALIA AND
THE PACIFIC

BEST COPY AVAILABLE

AUSTRALIA AND THE PACIFIC

AUSTRALIA

In Australia, three processes have been entangled during the past year. One is the Howard government's repudiation of international human rights scrutiny in general and by the United Nations in particular. Another is the climax of the 10-year work of the Council for Aboriginal Reconciliation – and the evolution of black-white *reconciliation* on which it has focused. The third we might call *the celebration syndrome,* in which Australians reflect on their past and present. The celebrations themselves are one hundred years of Australia's Constitution uniting six former British colonies as one country, the new century, the new millennium, and the Sydney Olympics.

Rejecting the World

Federation, i.e., the constitutional union of six colonies on January 1, 1901, had racial anxiety at its heart. Not only were British and Irish newcomers wresting the lands, freshwater, and coasts away from their Aboriginal and Torres Strait Islander inhabitants, but the new Australians feared the moral (!) and social effects of, and possible conquest by, the dark-skinned peoples of the South Pacific and the many-hued populations of Asia to the north. *Vis-à-vis* Aborigines and Torres Strait Islanders, the new Australian government had no power and, indeed, was constitutionally forbidden to exercise any. The former colonies, renamed 'states' from 1901, had sole power and, given that farming, settlement, pastoralism, and mining were the key to state livelihoods and revenue, indigenous peoples were pushed out of the way more or less brutally[1]. Only in 1967 did the national government obtain power in principle through a referendum to act in these matters but it has since left matters largely to the states. The referendum was itself in part a response to international perceptions of Australia and its treatment of Aborigines as racist.

Since the 1992 High Court decision in *Mabo* recognising Torres Strait Islander and Aboriginal land rights in principle, many white politicians have tried to stir up white anxieties. Targeting blacks by encouraging white fears that they will seize your home and prop-

TIMOR SEA
PACIFIC OCEAN
NORTHERN TERRITORY
QUEENSLAND
WESTERN AUSTRALIA
SOUTH AUSTRALIA
NEW SOUTH WALES
VICTORIA
INDIAN OCEAN
TASMANIA

erty, or that tougher laws and policing are needed to put them in jail because they are unemployed and thieving or violent, or that their gobbling up of white tax dollars is improper because they are just bad people who refuse to help themselves... these have been explicit and implicit political themes at state, Northern Territory (NT), and federal government levels. At the same time, however, Australians have been learning through the media, speaking visits, and documentaries that other countries like Australia – notably New Zealand, Canada, and USA – have been discussing indigenous political and legal rights and have moved towards greater indigenous control of their own lives, lands, and coasts.

In these contexts, the Howard government (elected March 1996) has led a national reaction against the indigenous renaissance and what it calls 'the Aboriginal industry'. Howard, who has been his own minister in charge of Aboriginal and Islander[2] affairs, has generally avoided policy debate on indigenous issues. He has been content with one-liners and old-fashioned platitudes, and the abruptness of his language and responses to reform or recognition proposed by or for Aborigines betrays his disdain and lack of under-

BEST COPY AVAILABLE

standing. When Aboriginal leaders began to travel abroad to explain their situation and ask for foreign support, he called this 'stunts'. His own government, of course, collects information on indigenous issues abroad.

In 2000, Howard took his worldview a step further. As reported earlier (*The Indigenous World, 1999-2000)*, he warned Kofi Annan on arrival in Australia not to speak of Northern Territory (NT) policies towards Aborigines. When Kofi Annan tactfully kept silent, his visit to Australia being to thank Australia for support of the UN in East Timor, Howard claimed in public that this silence proved that the UN found no fault with Australia's human rights practice. This was untrue, of course. A number of UN fora were finding fault with Australia's policies (and with its clumsy handling of international procedures and discussion of these). On August 29, 2000, Howard sent three ministers to tell the media that Australia would now refuse to cooperate with the UN on domestic indigenous and other rights matters[3]. Howard himself went to the UN in New York and announced this policy. The Howard doctrine is that decisions of Australian federal, state, and territory governments are beyond scrutiny by outsiders but that Australia, being a morally superior country, will continue to criticise others.

The intriguing question is whether this was a pre-emptive move before some new outrage attracts world criticism. Handing NT Aborigines and their lands and coasts over to the profoundly anti-Aboriginal NT government, i.e., by granting statehood as a gift to 'celebrate' Federation, would be one such possibility.

Reconciliation

The formal Reconciliation process climaxed on May 27, 2000, with the presentation of documents to the Prime Minister in the Sydney Opera House in the presence of the country's white political leaders. Many impressive speeches were made by both whites and blacks. Howard did not shout at the audience as he had done three years earlier at the previous Reconciliation convention but was quietly resistant all the same. Aboriginal leaders and the Council for Aboriginal Reconciliation had become so angry in preceding weeks and months with the Howard government's intransigence on issues of concern that they had strengthened their statement. The Council's Declaration reads:

MURRAY
DOWNS

Aboriginals regard their flag with pride. Photos: IWGIA archive

Aboriginal boy, Australia, painted for dance. Photo IWGIA archive

We, the peoples of Australia, of many origins as we are, make a commitment to go on together in a spirit of reconciliation.

We value the unique status of Aboriginal and Torres Strait Islander peoples as the original owners and custodians of lands and waters.

We recognise this land and its waters were settled as colonies without treaty or consent.

Reaffirming the human rights of all Australians, we respect and recognise continuing customary laws, beliefs and traditions.

Through understanding the spiritual relationship between the land and its first peoples, we share our future and live in harmony.

Our nation must have the courage to own the truth, to heal the wounds of its past so that we can move on together at peace with ourselves.

Reconciliation must live in the hearts and minds of all Australians. Many steps have been taken, many steps remain as we learn our shared histories.

As we walk the journey of healing, one part of the nation apologises and expresses its sorrow and sincere regret for the injustices of the past, so the other part accepts the apologies and forgives.

We desire a future where all Australians enjoy their rights, accept their responsibilities, and have the opportunity to achieve their full potential.

And so, we pledge ourselves to stop injustice, overcome disadvantage, and respect that Aboriginal and Torres Strait Islander peoples have the right to self-determination within the life of the nation.

Our hope is for a united Australia that respects this land of ours; values the Aboriginal and Torres Strait Islander heritage; and provides justice and equity for all.

The Howard government considered this statement too radical in several places to accept. The document was accompanied by four strategies for addressing social disadvantage, economic advantage, and Reconciliation work in future, and a National Strategy to Promote Recognition of Aboriginal and Torres Strait Islander Rights[4]. When the Reconciliation council handed its final report to the government in December 2000, the last two recommendations were the crucial ones:

5. That each government and parliament:

- *recognise that this land and its waters were settled as colonies without treaty or consent and that to advance reconciliation it would be most desirable if there were agreements or treaties; and*
- *negotiate a process through which this might be achieved that protects the political, legal, cultural and economic position of Aboriginal and Torres Strait Islander peoples.*

6. That the Commonwealth [national] *Parliament enacts legislation (for which the Council has provided a draft in this report) to put in place a process which will unite all Australians by way of an agreement, or treaty, through which unresolved issues of reconciliation can be resolved.*

A *Federation Forum* wound up the 10 years work of what one might call 'the white man's' reconciliation body, the Constitutional Centenary Foundation, created to build greater national cohesion, identity, and purpose through constitutional discussion and reform. Like the Reconciliation council, the CCF went out 'not with a bang but a whimper'. However, the Forum's summing up included a recommendation that:

> *There needs to be wide-ranging national debate within the framework of the reconciliation process about the representation of Australia's indigenous population. In this context, Australia should consider as one option the recognition within the structure of the Australian federation of the Aboriginal and Torres Strait Islander nations*[5].

Celebrations

Sport is a matter of basic national pride and identity in Australia to a degree unknown in other countries. The desire of political leaders to be photographed with sports heroes reached its dazzling zenith at the Sydney Olympics in September 2000 when the Prime Minister tried to join every Australian medallist as foremost 'cheerleader', as he put it.

The Olympics, especially their opening and closing ceremonies showcasing Australian performance art and cultural references – some droll, some solemn – were important for how Australians saw themselves and how they showed themselves to the world. Everyone performing and watching understood this. So the prominence given to Aboriginal and Islander artists, motifs, and athletes, especially runner Cathy Freeman, was significant. Many Australians regard Aboriginal and Islander flags and assertiveness as un- or anti-Australian. However, for most people they are merely statements of pride and are quite non-threatening.

The various 2000-2001 celebrations, and the urge of so many authors, artists, academics, commentators, and public persons to think about the past and how we are doing in the present, have inevitably made the Aboriginal and Islander issue central. With the recent bicentenary of the first white settlement at Sydney in 1788 and the flood of books and re-appraisals issued then, Australia has had more than its fair share of excuses to ponder itself. Howard and many like him regard national self-appraisal as unnecessary or even treacherous. In his view, people who dwell on Australia's 'blemishes', as Howard calls past massacres of Aborigines, are self-hating. They are betraying their country, which is 'quite magnificent', in endless ways, which his speeches enumerate. His view of Australia was further startlingly revealed when, during the Olympics, he told us how foreign visitors had come up to him and said, 'Mr Howard, your Australian people are nice and friendly'. With such a leader many Australians complain that their country is demeaned, but his comments on Aboriginal issues have been the particular focus of public unease.

While the country had appeared to be building a consensus as a confident, outward looking, inclusive, sophisticated, internationalist but caring society, the Howard government brought that to a halt. Its brand of nationalism is phobic, not forward-looking. But for any national identity, Aborigines and Torres Strait Islanders are central. The Howard government goes to Geneva to tell the UN that indigenous communities are wallowing in squalor and that past 'self-determination' policies are to blame[6], while the more extreme Right populist rhetoric of One Nation is more obvious in grasping the moral legitimacy of being the first citizens, which is held by Aborigines and Islanders[7]. The Right now has a reliable little band of newspaper columnists, some of them academics, as well as the journal *Quadrant*, which has been ranting about Aborigines and trying to deny or downplay their pain and history since the former editor was fired some years ago for becoming too sympathetic to indigenous woes. In other words, the national assertiveness that had been growing wholesomely enough in Australia has now become entangled with 'the culture wars' of intellectuals and the wilder perspectives and revisionism of the populist Right.

What Next?

While the newcomers to Australia battle over their visions of who they are, who they were, and who they may become, the indigenous political agenda is evolving more surely. Howard's intransigence over recent years (see especially *The Indigenous World 1998-99)* has in a sense encouraged unity and a more serious focus among Aboriginal leaders on a 'treaty' or whatever such a document or documents might be called[8].

A negotiated process leading to a treaty or similar framework is agreed broadly across the indigenous spectrum, whether ideological or regional. There is now a website[9] and momentum is building. Meanwhile, in regions like Torres Strait, the Cape York Peninsula, and Central Australia, grassroots work in indigenous communities seeking official partners or allies is pushing self-government in a desperate attempt to address the human ills, which government programs have so spectacularly failed to do.

The Howard government has attempted to reject and roll back progress achieved in indigenous rights and policy over the preceding 30 years by governments including the Fraser Liberal government in which Howard was a leading member. Howard, like his hero Margaret Thatcher, believes that society and culture are part of one's childhood, not something understandable in a wider sense.

With the UN world racism summit in South Africa, and the British Commonwealth heads of government meeting (CHOGM) in Brisbane, and a national Australian election sometime during 2001, there will be many contexts in which Aboriginal and Torres Strait Islander grievances and needs will be played out against an intransigent national government.

Notes and References

[1] For a general history of this anxiety, see Day D, 1997: *Claiming a Continent: a new history of Australia,* Angus & Robertson (HarperCollins), Sydney. For specific regional histories see Reynolds H, 1987: *The Law of the Land,* Penguin, Melbourne; and Reynolds H, 1995: *Fate of a Free People,* Penguin, Melbourne. Reynolds' other works such as the *Frontier* books are also highly recommended.

[2] 'Islander' in this report means Torres Strait Islanders specifically, not South Sea Islanders in general.

[3] Their media release was euphemistically entitled, 'Improving the Effectiveness of United Nations Committees', and was so obscure in its wording that one would learn little from reading it. The ministers, according to journalists, were extremely embarrassed at their press conference because they knew, presumably, even if the Prime Minister did not, what outrageous nonsense the whole exercise was.

[4] For further information see the Reconciliation Process' website: http://www.reconciliation.org.au/

[5] Paragraph 2.4.3. of Communiqué, *Federalism Forum,* October 19-20, 2000.

[6] Such comments show that the Howard government, apart from all else, has no idea what self-determination means. For UN speech see July 29, 1999, Australian government statement delivered by indigenous affairs minister John Herron, online: http://www.atsia.gov.au/fr_press.html

[7] **Jull P, 2000:** 'Hansonism and Aborigines and Torres Strait Islanders', *The Rise and Fall of One Nation*, ed. M Leach, G Stokes & I Ward, University of Queensland Press, Brisbane, 206-219.

[8] **Jull P, 2000:** 'Treaty, Yeah, Treaty Now!' *Arena Magazine*, No. 48 (August-September 2000), 20-21.

[9] http://treatynow.org/

AOTEAROA (NEW ZEALAND)

A general election in late 1999 saw a change of government, with the defeat of the National Party-led coalition. New Zealand's electoral system, with mixed member proportional representation, means it is unlikely that any one political party would ever get enough votes to form a majority government. The centre left Labour Party won the most seats but not enough to form a government. It subsequently formed a coalition government with the left wing Alliance Party. Labour secured victory largely because of the overwhelming support from Maori voters. This support won Labour all 6 seats reserved for Maori in Parliament. In 1996, Labour had lost all Maori seats to the New Zealand First Party after continually taking the Maori vote for granted and selecting poorly performing candidates to contest the election. The mixed member proportional representation system has led to more Maori elected to parliament. There are currently 17 Maori members of parliament, of which 10 are government members.

"Closing the Gaps" Policy

One of the key government election policies was closing the social and economic gaps between Maori and other New Zealanders. In Labour's pre-election policy document, the leader of the opposition, Helen Clark, was unequivocal about the policy:

> *"My commitment to those policies is absolute. Closing the gaps between Maori and other New Zealanders is a fundamental goal of the new Labour government."* [1]

The government even trumpeted its new policy at the meeting of the United Nations Working Group on Indigenous Populations at Geneva in July 2000, saying that:

> *"A major priority of the new government in New Zealand is to close the gaps between Maori and non-Maori."*[2]

The term itself was not new and had in fact been used by the Ministry of Maori Development as part of its monitoring of programmes for Maori during the previous administration. After the election, the Prime Minister Helen Clark confirmed her commitment to the policy and formed a powerful cabinet committee to be headed by her to monitor it. Further, government departments were put on notice that their performance in implementing the policy was going to be monitored and chief executives were going to have performance clauses included in their contracts. The budget earmarked NZ$258 million a year for 4 years to close the gaps[3].

At first there was general support for the programme. However *pakeha* – the Maori term for a New Zealander of European descent - became increasingly alarmed as the government unveiled various affirmative action programmes. Firstly, and most controversially, a government bill to parliament included a provision in new health legislation, which required the law to be interpreted consistently with the Treaty of Waitangi[4]. Many in the public believed that such a clause would give Maori preferential health care. It was amended and clarified but the damage had been done. Other initiatives targeted at Maori included anti-smoking campaigns (a third of all Maori women die from smoking-related diseases), hepatitis B screening programmes, diabetes screening and free contraception advice. The opposition waded in to the debate looking for electoral gain on what it said was racist legislation. The Race Relations Conciliator, an independent statutory body, warned that positive discrimination would incite racial division and resentment. In his annual report to parliament he said:

> *"People consider that government policies are' pandering' to Maori with more public funds, following large Treaty of Waitangi settlements and affirmative action programme".*[5]

He also added that:

> *"Gap reduction policies would probably have legitimacy in the public perception if they were targeted against poverty, rather than particular ethnic groups."* [6]

This had come immediately after the publication of a report by a senior civil servant that said poverty and deprivation were based on class not ethnicity[7]. This seemed to undermine the government's programme of targeting Maori rather than those in poverty. In the face of these reports and public pressure the government retreated, formally abandoning the 'closing the gaps' title. The programme was broadened to include all disadvantaged New Zealanders, not just Maori. In October, the Prime Minister noted that closing the gaps was:

> *"Not about gaps between Maori and Pacific peoples and others but about poverty."*[8]

Treaty of Waitangi Settlement Policy

Another of the government's key election promises to Maori was its Treaty of Waitangi settlement policy for breaches of the Treaty of Waitangi. Its election policy stated that:

> *"Labour is committed to the Treaty settlement process and is committed to reaching a fair and just settlement on a case by case basis."*[9]

Despite 10 years in opposition, it took the incoming government 8 long months to develop and release its policy. This was done without any consultation with Maori. Six key principles were adopted to guide the government in negotiating settlements for breaches of the Treaty of Waitangi. They were:

- Good faith
- Restoration of relationship
- Just redress
- Fairness between claimants
- Transparency
- Direct negotiation with the Crown[10]

Other key principles enunciated were

- The scrapping of the fiscal envelope concept[11].
- Claims to oil and gas and other Crown minerals were ruled out.

- Conservation land (wilderness land) would not be readily available to be returned for Treaty settlements[12].
- A comprehensive review of the Treaty of Waitangi Act, which established the Waitangi Tribunal and was the source of its jurisdiction (to enquire into breaches of the Treaty of Waitangi), was to be undertaken.
- Existing Treaty of Waitangi settlements would be used as benchmarks for future settlements.

Maori were openly critical that the policy was little different from that of previous governments. Given Maori expectations, the policy was underwhelming. One Maori leader summed up the general feeling when he said:

> *"This is meaningless. It simply means that the status quo remains."* [13]

It is understood that the Maori government members were particularly upset about the exclusion of natural resources from Treaty settlements. Tribes with natural resource claims before the Waitangi Tribunal were damning in their condemnation of the policy.

The Ministry of Justice was also directed to develop policy on claims to rivers, lakes and foreshore. This has postponed an inevitable showdown with tribes who have claims to rivers. In 1999, the Waitangi Tribunal released 2 reports on rivers[14]. It found that, under the terms of the Treaty of Waitangi, the tribes were guaranteed full exclusive and undisturbed possession of their traditional properties. The Tribunal found that the tribes had proprietary rights in the rivers akin to ownership rights based both on the Treaty of Waitangi and the common law doctrine of aboriginal title. In both cases, it recommended the Crown pay compensation for the appropriation and use of a resource it did not own. The government refused.

The government also stated that it wanted claimants to enter into direct negotiations with the Crown, bypassing the Waitangi Tribunal which, it said, was too slow. There are currently hundreds of claims waiting to be heard by the Waitangi Tribunal. It does not expect to complete these until 2014.

The government's approach and criticism and the policy to review the Tribunal itself were seen by many as a deliberate attempt to undermine the Tribunal. One of the main reasons for the delays has been the consistent refusal by successive governments to fund the Tribunal at a level necessary to carry out its statutory duties. The Tribunal requested an extra NZ$2 million but this was refused. As a consequence, the number of hearing days was reduced and claims mothballed. This refusal was completely at odds with the government's pre-election promise to:

> *" Ensure that the Waitangi Tribunal is adequately resourced."*[15]

In a speech at a ceremony to celebrate the Tribunal's 25th anniversary (October 2000), Chief Judge Joseph Williams[16] responded to these concerns. He noted that the Tribunal process gave Treaty settlements legitimacy and:

> *"Enhanced the likelihood of settlement in my experience."*

He also noted that the Tribunal needed to be funded to do its job[17].

The Oil and Gas Claim

A Treaty claim[18] was lodged with the Waitangi Tribunal by a tribe in 1999 for the oil and gas beneath its traditional lands. Under current legislation, the Crown owns all minerals. The claim was granted urgency and was set down for a hearing before Chief Judge Williams. However, before the hearing had commenced, the cabinet minister responsible for Crown minerals stated publicly that the claims were:

> *"A waste of time."* [19]

He said that the government would retain ownership irrespective of what the Waitangi Tribunal said[20].

Again, this seemed to fly in the face of its own key principle of good faith.

Judge Williams was not impressed and issued a curt reminder to the government of the constitutional implications of predetermining a case[21].

The question over ownership of natural resources is not one the government is going to be able to put in the 'too hard' basket for much longer. It is sure to test the loyalty and effectiveness of Maori government members of Parliament.

Treaty of Waitangi Settlements

Recently, the crown and the claimants have signed Deeds of Settlement settling 2 land claims on agreed terms[22]. Both followed earlier settlements and an apology was given with cultural address and cash settlements of NZ$2.6 and NZ$15.25 million respectively. Six Heads of Agreements have been signed between the Crown and claimants but are still under negotiation before Deeds of Settlements can be signed. Some 13 claimants are in pre-negotiations and 6 claims are still before the Waitangi Tribunal[23].

Sea Fisheries

In 1992, the government concluded a controversial settlement with Maori negotiators on all Treaty of Waitangi and customary rights over sea fisheries. This was in response to litigation, which threatened the government's fisheries quota scheme as a device to conserve and manage fish stocks. Under the terms of the settlement, the government provided cash to purchase the Sealords Fishing Company, which held 23% of the fisheries quota. This would meet the Crown obligation under the Treaty of Waitangi. The fishing quota would then be allocated to tribes on a basis to be determined by an independent Maori fisheries commission.

However, a number of tribes opposed the settlement and the attendant extinguishment of Treaty and customary rights. They said that the negotiators had no mandate to sign away their rights. Subsequent court action failed to halt the settlement. In 1993 a communication was lodged with the United Nations Human Rights Committee under the Optional Protocol of the Covenant on Civil and Political Rights. In November 2000, the Committee expressed its views that, on the facts, there had been no breach of the Covenant[24].

When a Maori Fisheries Commission was appointed under the 1992 settlement to develop a scheme for distribution of the fish quota to tribes, it was initially thought that this would only take a short time. However, after 8 years of continued and cripplingly expensive litigation, no final allocation has been made. Inter-tribal litigation exists between tribes who want the allocation made on the basis of population and others who want it on the basis of their coastline. To complicate matters further, pan-tribal urban Maori groups have entered the litigation claiming they are a modern manifestation of a tribe and should be allocated a quota. The new Government has appointed new commissioners to reach an acceptable compromise. The millions of dollars spent on litigation demonstrate the dangers of quick-fix global settlements.

Notes and References

[1] He Putahitanga Hou - Labour on Maori Development 16 October 2000.

[2] New Zealand Statement to the United Nations Working Group on Indigenous Populations, Geneva, 24-28 July 2000.

[3] *New Zealand Herald,* 30 December 2000.

[4] The Treaty of Waitangi was signed in 1840 by a number of Maori tribes and the British Crown. For an excellent Maori analysis see Tino Rangatiratanga site at http://aotearoa.wellington.net.nz

[5] NZPA 25 November 2000.

[6] *Ibid.*

[7] *Maori Socio-economic Disparity.* Simon Chapple, Department of Labour, 2000.

[8] New Zealand Herald 30 December 2000.

[9] He Putahitanga Hou *2000:9.*

[10] For further details and for an explanation of the term Crown see: www.exective.govt.nz and www.ots.govt.nz

[11] The fiscal envelope was introduced in 1994 by the then National Government. It proposed to limit all compensation to Maori for all breaches of the Treaty of Waitangi to NZ$1 billion NZ dollars. This led to unprecedented protests, land occupations and was unanimously rejected by all tribes.

[12] This meant that even land confiscated by the government during the land wars in the 1860s in breach of the Treaty of Waitangi would not be returned. Tribes were left landless as a result.

[13] Evening Post 21 July 2000.

[14] WAI 16: *Whanganui River Report* and WAI 212:*Te Ika Whenua Report.*

[15] He Putahitanga Hou 2000.

[16] Speech delivered at the 25th anniversary of the Waitangi Tribunal on 11 October. Judge Williams was a very experienced and brilliant Treaty lawyer prior to his elevation to the bench.

[17] *Ibid.*

[18] WAI 793 Nga Ruahine Oil and Gas claim.

[19] *Daily News,* 17 October 2000.

[20] The Waitangi Tribunal powers are mostly recommendatory and are only binding in some very limited circumstances.

[21] *Dominion,* 18 October 2000.

[22] Te Uri o Hau and WAI 33: *Pouakani Report.*

[23] See www.ots.govt.nz for further information.

[24] Mahuika and others v. New Zealand CCPR/C/70/547/1993.

THE PACIFIC ISLANDS

The year 2000 brought new hope but also challenges for the 5 million indigenous peoples of the Pacific that live scattered over more than 6,000 islands.

Of the 50 island nations of the Pacific, 20 have gained their political independence in recent decades (1960-80s), while the remaining colonies are still struggling for their right to self-determination and independence. But, as can be seen from the following country reports, the plight of the indigenous peoples of the Pacific transcends colonial boundaries and reaffirms the many similarities shared among the numerous islands. Here, three cross-cutting issues should be highlighted:

Women

The issue of violence against indigenous women and sexual abuse of women and children continues to be of growing concern, particularly those in situations of armed conflict. In Bougainville, the Solomon Islands and West Papua women have reported that rape and sexual violence were used against them during the armed conflicts.

Nevertheless, women continue to play a major role in addressing struggles for peace within indigenous communities in the Pacific. Their strength has been visible in promoting peace-building initiatives in situations of political and social unrest, such as those experienced in Bougainville, the Solomon Islands and Fiji. Yet, despite their key role in facilitating the peace process, women continue to be marginalized as participants in the actual negotiations between conflicting parties.

Environment

The increasing strain on the environment in the Pacific today is clearly threatening the very existence of indigenous cultures and communities in the region. The indigenous concept of 'vanua' (land), which is equally shared by all indigenous Pacific communities, maintains that people are inseparable from the environment. As such, the demise of one means an equal fate for the other. In parts of the Pacific, the living spaces, land and waters of indigenous peoples are targeted by industrialised nations for nuclear testing and dumping of radioactive wastes from industrial or military operations. Furthermore, threats posed by natural resource extraction (mining, logging, fishing, coral extraction, etc) on the part of transnational corporations and the emerging effects of climate change and rises in sea level are also having devastating effects on the ecosystems, culture and livelihood of indigenous peoples in the Pacific.

Demilitarisation

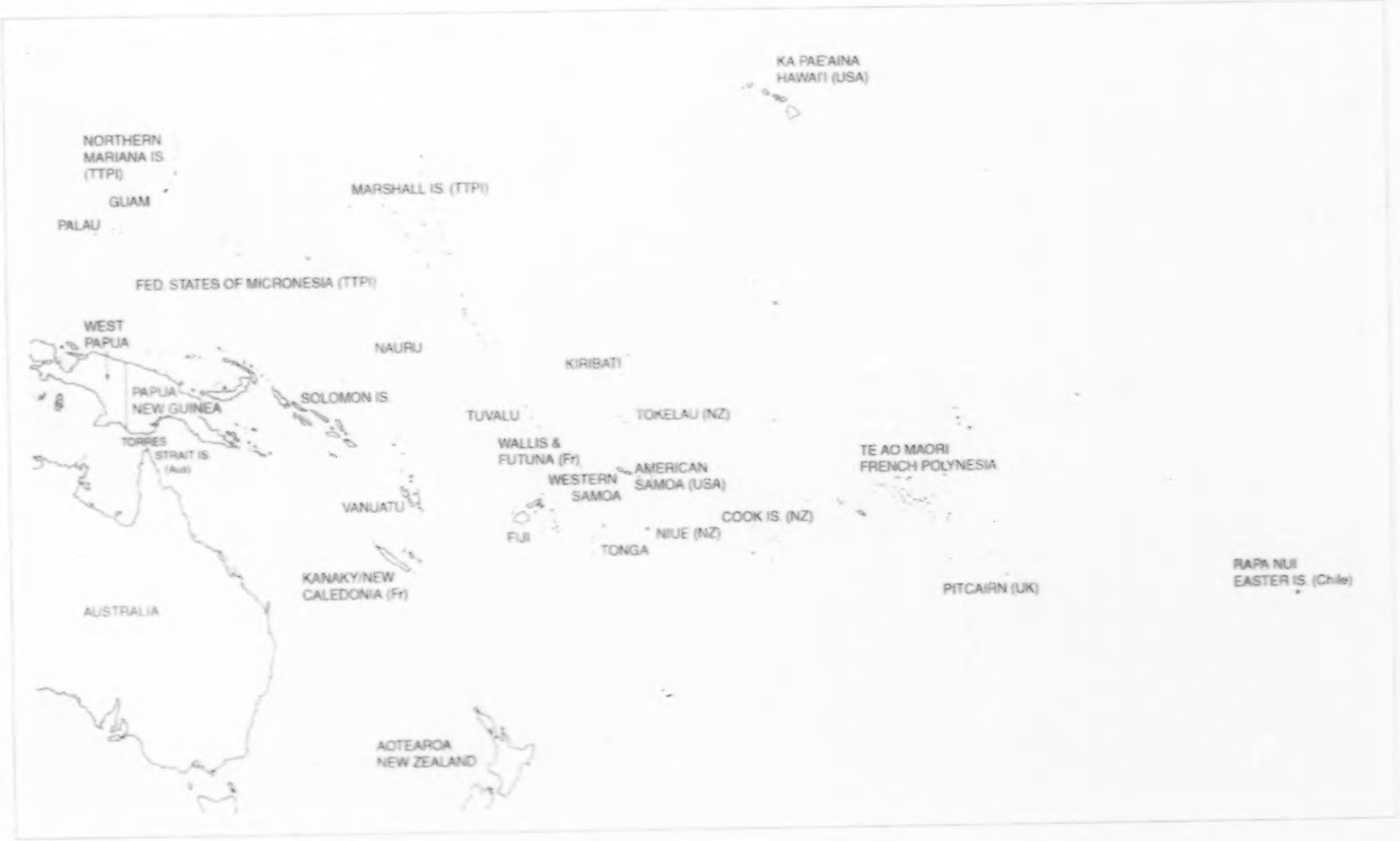
Most strategic analysts in the region have noted that the main threat to national security in the Pacific islands is internal rather than external. Military doctrines have turned inwards to deal with threats to the security of the State from: failed politicians and political factions; resource and landowners; indigenous groups and movements for democratic rights. Of equal concern are the sources from which arms are obtained. Soldiers who took over the Fijian Parliament in May 2000 were armed and trained by the very same governments who preached good governance and a return to democracy – Australia, New Zealand, the United States, Britain and France. The 12,000 plus lives lost in Bougainville as well as in the Solomon Islands and Fiji were the result of ammunition ultimately sourced from Australia. The increased militarisation of the Pacific will continue to be a major threat to the social fabric, struggles and value systems of indigenous peoples in the region.

WEST PAPUA

During the year 2000, the indigenous peoples of West Papua consolidated their efforts and activities both nationally and internationally to reaffirm their ultimate goal of independence.

The first West Papuan Congress, held in February 2000, was a landmark in determining the process of uniting the various factions struggling for their self-determination. This Congress reaffirmed its rejection of the outcome of the 1969 Act of Free Choice and reiterated its desire for self-determination. The communiqué stressed the consensus of the Council as follows:

- That it is our desire to choose freedom and to separate from the Republic of Indonesia, as was conveyed to President Habibie and members of his reformation cabinet in January 2000.


KA PAE'AINA
HAWAI'I (USA)
NORTHERN
MARIANA IS.
(TTPI)
GUAM
PALAU
MARSHALL IS. (TTPI)
FED. STATES OF MICRONESIA (TTPI)
WEST
PAPUA
NAURU
KIRIBATI
PAPUA
NEW GUINEA
SOLOMON IS.
TUVALU
TOKELAU (NZ)
TORRES
STRAIT IS.
(Aus)
WALLIS &
FUTUNA (Fr)
WESTERN
SAMOA
AMERICAN
SAMOA (USA)
TE AO MAORI
FRENCH POLYNESIA
VANUATU
COOK IS. (NZ)
FIJI
NIUE (NZ)
TONGA
KANAKY/NEW
CALEDONIA (Fr)
PITCAIRN (UK)
RAPA NUI
EASTER IS. (Chile)
AUSTRALIA
AOTEAROA
NEW ZEALAND

BEST COPY AVAIL

- That we shall pursue dialogue in a peaceful and democratic way in order to secure the agreement of the Indonesian government.

The Congress elected Theys Eluay and Tom Beneal as chief executives of the Papuan Presidium Council. The 18-member Presidium included representatives of churches, women, customary landowners, former political prisoners, students, youth and the professions. A second and much larger Papuan People's Congress was held between 29 May and 4 June 2000 in the capital, Port Numbay (Jayapura). Over 3000 delegates attended, including representatives from central government and provincial administration, Papuan leaders living in exile, supporters of the *Organisasi Papua Merdeka* (OPM) as well as observers from Aceh and Riau. On 4 June 2000, the National Congress issued a Declaration of Independence. Congress leader, Theys Eluay, again reiterated the West Papuan Movement's wish to proceed peacefully towards independence.

Foreign countries, including those who were allowed to attend the Congress as observers, immediately issued statements condemning the declaration of independence and renewing their support to Indonesia. Australia, China, the USA, Japan, the Netherlands and the European Union all said they would not recognize Papuan independence and would not interfere in Indonesia's internal affairs.

However, the Nuclear Free and Independent Pacific (NFIP) Movement, recognizing the genuine aspiration for self-determination of the indigenous peoples of West Papua (April 2000), placed West Papua as its priority campaign on the issue of decolonisation and, in September 2000, the World Council of Churches and the Pacific Conference of Churches Meeting, held in Suva, Fiji, called on the governments of the Pacific to support the re-listing of West Papua on the United Nations list for decolonisation.

Support to West Papua was also stated on several occasions by the President of the Republic of Nauru, Bernard Dowiyogo, and at the United Nations Millennium Summit held in New York in September 2000, both he and Vanuatu's Prime Minister Barak Sope raised the West Papuan issue – the first countries ever to declare support for West Papuan independence at the United Nations.

Nauru's support became visible with the presence of key West Papuan leaders in the official Nauru delegation to the 31st South Pacific Forum in Kiribati in October 2000. It was an historical moment when the Forum passed a resolution on West Papua expressing its "deep concerns about past and recent violence and loss of life in the Indonesian province of Irian Jaya (West Papua)".

By the end of 2000 and the beginning of 2001, new West Papua solidarity groups and networks had been set up everywhere, notably in Australia, New Zealand, the United States and throughout Europe.

In October, the Indonesian government and the military increased their violent and bloody crackdown on West Papuan assertion towards self-determination. Thirty people were killed in riots after police forced down the Morning Star Flag, the Papuan symbol of Independence. A month later, about ten leaders of the West Papua Presidium Council, including the Chairperson, Theys Eluay, were arrested and continue to be detained by the Indonesian authorities without trial.

On December 1, as West Papuans prepared to celebrate the anniversary of the West Papuan Declaration of Independence in 1961, police enforced a ban on raising the Morning Star Flag, in what has been described as a calculated move to heighten tensions. Two policemen and a public servant were killed when independence supporters attacked a police station in response to Indonesian brutality while arresting independence activists. Nearly one hundred people were detained for several days following the attack, with three students killed in custody. At least ten independence supporters were killed in Merauke.

In search of safety, hundreds of West Papuans have crossed over to Papua New Guinea and are being held in church care centres in addition to existing refugee camps. The recent border crossers have not been recognized as refugees and have been brutally treated by the Papua New Guinea security forces. Leaders have been arrested and are awaiting trial in Papua New Guinea.

BOUGAINVILLE

After more than ten rounds of negotiations held throughout the year 2000, a major step forward took place when a referendum on Bougainville's independence was agreed to and finalized in January 2001 between Bougainville leaders and the PNG government.

The war of independence in Bougainville between 1989 and 1998 led to more than 12,000 deaths, in a clash between the Papua New Guinea Government and rebel forces under the Bougainville Revolutionary Army (BRA) and Bougainville interim Government (BIG).

Hundreds of children have been born as a result of the repeated raping of Bougainville women and girls as a weapon of war used by the PNG military forces.

The 1998 Lincoln Agreement initiated a peace process, calling for the gradual withdrawal of Papua New Guinea Defence Force (PNGDF) troops from the island, and the disarming of the BRA and the pro-Papua New Guinea resistance forces. People on Bougainville welcomed the end of the conflict under a Peace Monitoring Group involving Australia, New Zealand, Vanuatu and Fiji. Reconstruction efforts are in progress under the supervision of the South Pacific peacekeeping forces and the United Nations.

However, the total withdrawal of PNG military forces from Bougainville, as scheduled in the Lincoln Agreement, has not happened. As a result, the BRA and resistance forces have not put down their arms, although the BRA has submitted its proposals for a disarmament process to the Peace Process Consultative Committee, which oversees the peace initiatives on the island. Above all, the fundamental issue of self-determination has not been resolved.

In March 2000, what seemed to be a breakthrough in the peace talks later turned into another deadlock. PNG Foreign Affairs Minister, Sir Michael Somare, and Bougainvillean representatives (Leitana Council of Elders Joel Banam, Bougainville Governor John Momis and the BPC President Kabui) signed the Loloata Understanding. This included a commitment from the PNG Government to change PNG's constitution to allow a high degree of autonomy for Bougainville. But the PNG cabinet later reiterated its opposition to an independence option, which has since remained the major sticking point.

Speaking on the March 2000 talks, BPC international spokesperson, Moses Havini, expressed concern saying, "There is nothing in the understanding that pins PNG down to a fixed timetable or commitment to a level of autonomy or even when autonomy might be achieved. Acknowledging an 'aspiration' is a far cry from responding to those 'aspirations' . . ."

In September 2000, Bougainville leaders and PNG officials praised another breakthrough in peace negotiations that saw an agreement towards a constitutional framework for a referendum on independence. This referendum, which must include the option of independence for the island – will be held no sooner than 10 years and no later than 15 years after the election of an autonomous government, expected in January 2002. Also under the agreement was the requirement that the Bougainville fighters hand over the weapons they have held since the late 1980s. But the BRA continues to question why the PNG government will not commit to do the same. However, joint leaders of the negotiating team emphasized that a breakthrough was only possible because both sides had been willing to compromise.

On 9 March 2001, peace talks re-convened in Port Moresby to revisit autonomy issues. With more than 20 representatives from Bougainville, as well as government officials and United Nations Executives, the meeting discussed areas of agreement as well as those that needed further negotiations. The issues relate to the kind of powers the State will have as opposed to what will be given to Bougainville. This will form the basis of a constitution to enable Bougainville to operate an autonomous government. However, critical issues that still need to be thrashed out include courts and judicial review, revenue-raising powers, human rights, foreign aid, intergovernmental relations, public administration and fiscal accountability. Furthermore, Bougainville women who were raped and used as weapons of war in the 10-year conflict continue to voice their frustration at the lack of justice in addressing the violations committed against them.

The question now is exactly which critical areas the Bougainville people will have full autonomy over.

THE SOLOMON ISLANDS

Since 1998, the Solomon Islands has experienced a crisis that has threatened its very existence as a nation. The root cause of the crisis has been described in some quarters as ethnic differences between the peoples of Guadalcanal and Malaita.

The root causes of this crisis go far beyond this and can be found in the poor policies of successive governments, weak and ineffective structures and systems of government, poorly planned large-scale resource development, the inequitable distribution of development benefits and the need for institutional and constitutional change. The ethnic explanation alone is too simplistic and is unable to explain the causes of the conflict or contribute to its resolution.

Socio-economic and Political Issues

At independence on 7 July 1978, Solomon Islanders were faced with the daunting task of forging a national sentiment out of diverse societies: the Solomon population spoke over eighty-seven languages. Apart from issues of nationalism, the economy was dependent on the exploitation of natural resources by foreign companies and infrastructure development concentrated around Honiara, the national capital.

Honiara was also where most of the formal employment opportunities were concentrated, while Isabel, Makira/Ulawa, Temotu and Malaita Provinces accounted for 49% of the country's population, and only 15% of formal sector employment.

The distribution of benefits accrued from natural resource development became an issue in the decades following independence; natural resources were rapidly being depleted but not for the welfare of those who own them but to finance a government system.

Related to these developments was the issue of land. In the past decades, many Guadalcanal people (predominantly men) sold customary land around Honiara to people from other provinces. This was in spite of Guadalcanal's matrilineal society where females are the custodians of land. Furthermore, many individuals were selling land without consulting other members of their *laen* (tribe). This often caused conflicts within land-owning groups and between them and the new "owners". The sale of land has, over the years, been resented by women and a younger generation of Guadalcanal people who view the act as a sale of their "birth right".

In the 1980s and 1990s, the country's deteriorating economy saw the government accumulating debts well over its ability to repay. This was due partly to poor management practices such as uncontrolled spending and non-collection of revenue. The period also witnessed substantial fraud by public servants and huge amounts of money were given to members of parliament through the Constituency Development Fund (CDF). Consequently, a majority of the country's population suffered; a few became very rich at the expense of nation-wide development.

Since independence, there have been concerns that the provincial system of government was expensive and ineffective. In the report of the 1987 Constitutional Review Committee (CRC), one of the major recommendations was the establishment of a federal system of government. This, however, was ignored by successive governments.

Another issue raised by the 1987 CRC report was that relating to the freedom of movement and settlement. Although the Solomon Islands Constitution guarantees to every person the "freedom of movement . . . [which] . . . means the right to move freely throughout Solomon Islands, the right to reside in any part of Solomon Islands . . ." the CRC report highlighted the need to control the movement

Northern part of Papua New Guinea. Photo: Palle Kjærulff Schmidt

Man decorated for a sing-sing tribal ritual. Highland, Papua New Guinea. Photo: Palle Kjærulff Schmidt

BEST COPY AVAILABLE

and settlement of people. On Guadalcanal, the issues of migration and settlement were compounded because of the rapid growth of Honiara and the expansion of squatter settlements in areas around Honiara.

Another 1990s phenomenon, which goes a long way towards explaining the Guadalcanal crisis, was the Bougainville migration. Upwards of 9,000 Bougainvilleans fled to the Solomon Islands with the vast majority of them settling in Guadalcanal for long periods of time. They have definitely influenced Solomon Islanders.

But, the highlight of the 1990s was the 1997 national election. For the first time in the country's electoral history, voters dismissed more than half of the sitting parliamentarians. The election results sent a strong message to politicians that people would no longer accept "business as usual." They were demanding change, and quickly.

The Current Crisis

From early 1998 to late 1999, tensions between Guadalcanal people and Malaita settlers escalated to a stage where at least 50 people were killed and more than 20,000 people (mostly Malaitans) forced out of settlements on Guadalcanal, especially in areas around Honiara.

Throughout 1999, there were also continuous confrontations between the Royal Solomon Islands Police and the Guadalcanal militants, the Isatabu Freedom Movement (IFM). By April 2000, about thirteen IFM members had been killed by the police. The movement quickly attracted supporters from all over the island.

By the beginning of 2000, a group claiming to represent displaced Malaitans was formed and called itself the Malaita Eagle Force (MEF). This group's concerns centred around demands for compensation of properties damaged and destroyed by the IFM, the killing of Malaitans and the protection of Malaitan interests in Honiara.

The Search for Peace

Since early 1999, a number of attempts have been made to bring an end to the crisis. These processes involve attempts to address the underlying issues of the crisis and to deal with the demands of the various parties.

These attempts at resolution have included a *kastom* (custom) feast ceremony and five "peace talks" that have resulted in the signing of various documents: the Honiara Peace Accord (28 June 1999), the

Panatina Agreement (12 August 1999), the Buala Peace Conference (4 - 5 May 2000), the Auki Peace talks (9-10 May 2000), the Solomon Islands National Peace Conference (25-27 August 2000), and the Townsville Peace Agreement (9-15 October 2000).

If anything positive is to come out of the talks, all the parties involved in the crisis must be represented and the underlying socio-economic and political issues must be addressed. Furthermore, there is a need to look beyond ethnicity. We must explore the socio-economic and political issues that underlie the issues raised by the various actors in the crisis. In a way, there is legitimacy in many of the issues raised by Malaitans, Guadalcanal and others who are involved. Ethnicity is merely the avenue through which people's frustration becomes manifested.

KANAKY (NEW CALEDONIA)

The Government of New Caledonia has been working towards implementing the content of the Noumea Accord signed in May 1998 between the pro-independence coalition FLNKS (Front de Libération Nationale Kanak et Socialiste), the anti-independence majority RPCR (Rassemblement Pour la Calédonie dans la République) and the French government.

Although all parties to the Accord agreed on the principle of rebalancing the economy of the country and promoting greater participation of the indigenous Kanak people in the local economy, the Accord has already come under criticism from both member and non-member parties to the Accord. The French Government has been criticised by both major parties to the Accord for not playing its role as arbitrator in the implementation of the Agreement.

In a statement to the United Nations Special Committee on Decolonisation at the Pacific Regional Seminar 2000 in Majuro (Marshall Islands), the FLNKS representative raised concerns about power sharing within the New Caledonian Government, highlighting the failure on the part of the RPCR majority to release vital information to the opposition. The FLNKS questioned further the genuine commitment of the French Government to ensure the implementation of a genuine process of decolonisation for the indigenous Kanak.

The Social Pact

In addition to the difficulties of operating these newly established political institutions, Kanaky/New Caledonia has also been destabilised by significant events reflecting social disparity between the different communities.

In the lead up to the signing of the "Social Pact" by the local government and employers' organisations on October 20, numerous workers' strikes and factory seizures disrupted the fragile economy of the country. The pact was signed after extensive public debate started with its release in August. But some unions refused to sign the 20-page agreement; Union Syndicale des Travailleurs Kanak et Exploités (USTKE) described it as deceitful.

However, other parties saw it as a stabilising factor after many months of strikes and industrial unrest. It sets out conflict resolution procedures and compulsory "preventive" dialogue where strike actions threaten and requires five days' notice of a strike.

A key provision was that the country's minimum wage would rise to CFP Fr 100,000 per month within two years. However, in November a renewed attack on the pact was launched by a group of unions headed by Soenc-mines. They closed down the nickel mine in Kouaoua, disrupted others and organised a largely successful general strike on November 16. Next morning, the unionists positioned roadblocks on main roads in Noumea, disrupted the busiest highway intersection on the main island and pelted security forces with paving stones.

By afternoon, however, the troubles were over and the militants had won a new wage deal. On December 28, the government approved the new wages legislation.

On the Political Front

As a result of an unexpected coalition between anti-independence forces and pro-independence moderate parties within the new government, the political panorama has changed. In addition to such an unexpected coalition, Union Calédonienne (UC), the major party within the FLNKS faced serious divisions within its ranks.

In April, seven members of the New Caledonia Congress who were identified as FLNKS reverted to their UC identity, saying the decision did not affect UC's position within the FLNKS but would give the party an identifiable voice and role within the Congress. The breakaway group say they reaffirm the goal of UC and FLNKS to take the country to independence.

TE AO MAOHI (FRENCH POLYNESIA)

In French Polynesia, the debate over expected amendments to the French Constitution to allow the country greater autonomy and self-government is still high on the agenda of political parties. Like Kanaky/New Caledonia, the commitment of the French Government towards emancipation of the indigenous Maohi peoples in Te Ao Maohi remains questionable.

Although France has ended nuclear testing on Moruroa and Fangataufa atolls since 1995, the legacy of French nuclear colonialism in Polynesia is still very much alive in the minds of the Maohi people. A growing campaign for the opening of military archives related to the nuclear era in French Polynesia is drawing increasing support within the region and beyond.

Initiated by local Non-Government Organisations (NGOs) and Church groups, the call for transparency over the testing of nuclear devices in French Polynesia is also echoed by parliamentarians in France and international organisations in Europe and around the world. The petition for opening the archives is based on eyewitness testimony of former test-site workers published in "Moruroa & Us" (1997) as the result of a sociological survey carried out by local NGOs and the Evangelical Church of French Polynesia with support from other organisations in Europe. But, to discredit the testimony of the victims of nuclear tests, the Ministry of Defence manipulated the findings of an uncompleted epidemiological study conducted in 1998 by INSERM, and thus discharged the Board of the Centre d'Expérimentation Nucléaire (Centre for Nuclear Testing) of any responsibility in current serious health problems in French Polynesia.

In January 2000, replying to Emile Vernaudon - a Member of Parliament from French Polynesia who advocates the opening of the archives - Minister for Defence Alain Richard stated that France would not lift the "Defence Code" seal over the 193 nuclear tests carried out on the atolls of Moruroa and Fangataufa between July 1966 and January 1996. But documents unsealed by the "Defence Code" reveal that the tests had not been conducted under safe conditions for the people of French Polynesia or their environment.

The Jospin government recently approved a request from the Parliamentary Commission of Investigation into the massacres in Rwanda. In the light of such a precedent, the opening of military archives can no doubt be extended to the question of nuclear testing in French Polynesia.

In 2000, *the Comité de Suivi Moruroa e Tatou* ("Moruroa and Us" Follow up Committee) was established as an independent organisation operating with the formal support of the Evangelical Church of French Polynesia. Members of the Committee are rooted in civil organisations in Polynesia. The Committee is now playing an important role with the former test site workers, who want to establish a recognised committee to raise their concerns. During the year, the Committee attended meetings in Europe and lobbied French parliamentarians to support their call for opening the archives on nuclear testing.

The campaign has won support abroad and is networking with former nuclear test veterans, for example in Fiji and New Zealand. The Committee also initiated dialogue with the Ministry of Defence on the call to open the archives and has launched a postcard campaign to support their lobbying. A major activity of the Committee is to translate into *Reo' Maohi* the testimony of former test site workers published in "Moruroa and Us".

TOKELAU

The small island group of Tokelau has a population of approximately 4000 persons, 1400 located in Tokelau with a total land area of 12 square kilometres split into three atolls and the remaining 2,600 based mainly in New Zealand, Samoa and Hawaii.

Tokelau is one of the seventeen countries on the list of non-self-governing territories with the UN Special Committee on Decolonisation and is working towards self-governance and independence. In recent years, there has been a process to devolve powers from New Zealand to the people of Tokelau.

In forging Tokelauan nationhood, the village is the foundation of authority. The Village Council of Elders is the central authority in government, not some distant colonial administration located in Apia or Wellington (NZ). The Modern House of Tokelau is the initiative that will bring Tokelau that much closer to exercising its right to an act of self-determination.

The strong wish of the leadership of Tokelau (both traditional and modern) is for the UN Special Committee on Decolonisation to continue to have a presence beyond the year 2000.

Tokelau seeks to discuss further with its administering power a Comprehensive Plan outlining the major development components to be achieved and settled before a specific timetable for self-determination is considered. Of major concern to Tokelau at the present moment is its need for future economic survival. Accessing major funding resources to develop fisheries as the main natural resource and meet other priorities such as sea walls has proven difficult and the same applies to accessing funds from the international community for infrastructure development. Being a territory with extremely limited natural resources, the question of self-determination is difficult when one has to rely on meagre resources. If Tokelau gains self-determination tomorrow, it will not have the economic means to survive.

Tokelau, however, is seeking to reclaim land that will extend its Exclusive Economic Zone and preserve its culture and economy. A crucial concern is the return of Swains Island (Tokehega), which was granted to American Samoa in an agreement between New Zealand and the United States. Tokelau has cited external documents that support this claim. This is an issue of great pain to Tokelau. It is also an issue that could relieve the pressures on and the need for fertile land to grow food, the production of copra as well as untold marine resources.

Tokelauans see themselves as a unique people trying to survive. They are weak and need the support of the international community - both material and moral.

FIJI

Lead-Up to Coup of May 19th 2000

The revival of the Taukei Movement (TM) in Fiji in April 2000 heralded the political upheavals that Fiji continues to face to date. The TM is an indigenous nationalist movement that was instrumental in the political processes and actions that led towards the 1987 coups. It was revived with a public vow by one of its leaders, veteran politician Apisai Tora, that the Labour party-led People's Coalition government of Mahendra Chaudry would be overthrown. Tora said that Chaudry's actions and statements since taking office in May 1999 had been offensive to indigenous Fijian institutions and that Chaudry was literally inviting a coup. He said that the aim of the TM was also to change the 1997 Constitution to ensure Fijian political paramountcy. The Fiji Military Forces immediately issued a statement saying they would not be party to any attempt to overthrow the government.

The first TM's march against Chaudry's government was held on 20 April 2000 at Lautoka (Fiji's second largest city) with a turnout of 300 people. A week later, there was a bigger turnout with a protest march through Suva of about 5,000 supporters.

The main opposition party, Soqosoqo Vakavulewa ni Taukei (SVT), formerly led by coup leader and former Prime Minister Sitiveni Rabuka but now headed by one of the founders of the TM in 1987, Ratu Inoke Kubuabola, strongly supported the revival of the TM and planned activities. Chaudry's government maintained that the SVT was endorsing an extremist nationalist policy with the TM in order to regain its former political status. It said such extreme racial politics had no place in Fiji's multi-racial and multi-cultural society.

On 28-29 April 2000, the Bose Levu Vakaturaga or Great Council of Chiefs (BLV/GCC) met on the future of the Agricultural Landlord and Tenants Act (ALTA), which regulates leases to largely Indian tenants on indigenous-owned land. An amicable settlement to ALTA is seen as crucial to economic and political stability in Fiji as it directly affects the vital sugarcane industry. Most Fijian provincial councils have called for the scrapping of ALTA, to be replaced by the Native Land Trust Act (NLTA). In response, Chaudry's government stated that they would like to retain ALTA, which angered many chiefs and Fijian landowners.

The Opposition SVT Party and NLTA's Board (NLTB) also attacked the $28,000 cash payment made by Chaudry's government to cane farmers whose land leases had not been renewed, while landowners were provided $10,000 in assistance for land rehabilitation. Chaudry's government explained that $28,000 is the cost of resettling a tenant farmer, and is a one-off payment for the rest of their lives. The $10,000 for landowners is a form of affirmative action and designed to help them farm their own land.

Then there was the issue of the deal being negotiated by the government over the harvest and marketing of Fiji's rich mahogany plantations. While no deal was signed, the government was under attack for the way it conducted the negotiations. The US government accused the Fiji government of deceiving them, an American consortium said it would take the government to court for defamation, and the NLTB and landowners jointly accused the Government of lack of consultation.

Armed Takeover

Against this backdrop, on 19 May 2000, seven armed gunmen led by failed businessman George Speight stormed Parliament House whilst it was in session, and took Prime Minister Mahendra Chaudry, his Cabinet and members into hostage. The attempted coup happened exactly one year after the Labour party-led People's Coalition Government came to power.

The armed take-over coincided with a march by around 5,000 supporters of the Nationalist Party and the TM through the streets of Suva. Members of the take-over gang were later identified as soldiers of the elite First Meridian Squadron, the military's Counter-Revolutionary Warfare Unit established after the 1987 coups.

Participants at the march were largely unaware of the armed take-over. When informed of the take-over, the marchers immediately set off for Parliament. As news of the armed take-over spread through Suva, businesses began closing shops and left for home. It is believed that groups of criminals began smashing shop windows and looting. As this continued without police intervention, many bystanders joined in the rampage and took items at will. Suva quickly turned into a scene of all-out looting. People returning from work and school children were soon involved as whole supermarkets and shops were emptied, windows broken and the burning of buildings started. The helpless police could only watch. Fire services tried to stop the blaze from spreading. The looting continued for almost three hours before the Police organised, regrouped and began to stop the carnage, and arrest the looters. Police reported that 16 shops were burnt and over 160 looted within the vicinity of Suva, with damage estimated at between F$30-60 million.

Wrangle between Speight's Taukei Civilian Government and Ratu Sir Kamisese Mara

At his first media conference, Speight stated that he had abrogated the 1997 Constitution, and made himself head of state "by the will of the people of Fiji". He said he was acting on behalf of all indigenous people in Fiji and that they were one hundred per cent behind him.

On Saturday 20 May 2000, the partially military-backed civilian coup instigators announced Ratu Jope Seniloli as President of the self-proclaimed "Taukei civilian Government". Speight was sworn in as interim Prime Minister and his Cabinet was comprised of 13 others from the SVT Party, the Fiji Alliance Party and the Nationalist Party.

A state of emergency was imposed by the then President, Ratu Sir Kamisese Mara. Immediately the army, police and civil service rallied behind him. The BLV/GCC was convened a few days later and, together with the military, negotiations immediately began with Speight for the release of parliamentarians.

Speight insisted that the 1997 Constitution, the President and Prime Minister should all be removed. The BLV/GCC meeting from 23-25 May 2000 gave its full support to Ratu Sir Kamisese as President, and its blessing to his appointment of an interim administration. Speight rejected the BLV's/GCC's ten point resolution to resolve the political impasse.

Ratu Sir Kamisese Mara, quoting from Section 106 (1) of the Constitution (Amendment) Act of 1997 prorogued Parliament and then appointed Ratu Tevita Moemoedonu, a member of Mr. Chaudry's Cabinet, as the interim Prime Minister. Rt. Tevita Momoedonu was amongst the few parliamentarians who were not present in the House of Representatives on the day of the coup. Both Speight and the Labour Party denounced this move.

Military Rule and Negotiations with Speight

In a move to find a quick solution to the political impasse, Ratu Sir Kamisese Mara, after being approached by a group of senior military officers and after a short Fijian traditional ceremony, was "set aside" from the office of President to allow the military to take full control of matters in the country. The Fiji Military Forces claimed they did this in a bid to maintain security in the country. On 29 May 2000, Commodore Ratu Voreqe Bainimarama declared martial law and the military later issued a decree abrogating the Constitution (Amendment) Act of 1997 and a second decree allowing all laws to continue unless modified (Decrees No.1 and 2).

In spite of the above moves from the military, Speight continued to make more demands. The Commodore reaffirmed that amnesty was granted to Speight and the seven men who stormed the Parliament but the amnesty did not include immunity from criminal activities or the murder of a police officer.

Amidst all this, the economic crisis began to escalate, with a thousand garment industry workers being laid off, more professional people migrating from the country, the tourist industry suffering a 60% drop in bookings and trade bans being imposed by the Australian Council of Trade Unions and the Solomon Islands Council of Trade Unions. Schools on the main islands of Vanua Levu and Viti Levu and the University of the South Pacific were closed early, a rugby tour to New Zealand by a Fiji Under 21 rugby group was called off following the refusal of the New Zealand government to grant them visas, the public service commission announced that they had taken a 20% pay cut across the board and a couple of overseas governments recalled their students through security fears. On 7 June 2000, Fiji was suspended from the Commonwealth.

Governance with the Support of the Fiji Military Forces

With negotiations on the release of parliamentarians still continuing, the military announced a 17 member interim civilian administration led by Laisenia Qarase, with Ratu Epeli Nailatikau as Deputy Prime Minister and Minister for Foreign Affairs.

On 18 July 2000 (five days after the release of all remaining parliamentarians by Speight), Ratu Josefa Iloilo, following the endorsement of the BLV/GCC, was sworn in as the new interim Head of State and President by the military. A few days later, a second interim civilian government led by Laisenia Qarase was appointed. The second interim administration was made up of 24 Fijians, one Rotuman, one Indian and two part Europeans. There were five women in the new line-up, with one holding a substantive Ministerial position and the remaining four holding Assistant Ministers' positions.

One of the first items of business dealt with by the second Interim Administration was to seek the approval of the BLV/GCC for a ten-year development plan for Fijians and Rotumans and the revision of the Constitution (Amendment) Act of 1997. The BLV/GCC approved the formulation of a blueprint of actions.

The blueprint of action is aimed at enhancing Fijian and Rotuman interests and touches on issues such as agriculture, education, business, land ownership and leases. In a submission made by the Interim Administration its aim was stated as being to promulgate a revised constitution by 2001 and to hold general elections no less than a year after that. In his submission, Qarase announced that the new constitution would have three main objectives:

a) To address the concerns and aspirations of Fijians and secure paramountcy of their interests, which was derived from the Deed of Cession of 1874;
b) To provide a framework of good governance in Fiji including equal rights and freedoms for all citizens and groups, the rule of law and an independent judiciary, and a Parliament representative of all communities in Fiji; and
c) To put in place a constitution that will provide the framework for the communities in Fiji to work together and to promote national unity.

The blueprint had been described by certain groups within the community as racist but Qarase called on his critics to understand indigenous concerns and assured other races that they would be catered for. Critics of the planned constitutional review had also argued that this undertaking could only be decided by a group of elected representatives.

The continuing lawless actions following the release of hostages, especially the taking over of Korovou town (where Speight comes from), incidents of violence and the looting of property experienced by Indian rural communities, the detention of 400 Indians in Labasa and several roadblocks all culminated in the detention of George Speight and three of his closest confidantes by the military on 26 July 2000. The following day, during an early morning military ambush, 369 civilian supporters of Speight were taken in and detained at the Nasinu Police Station. Speight and twelve others were refused bail by the court and jointly charged with: consorting with people carrying firearms and ammunition, unlawful burial at the Parliamentary complex, unlawful assembly at Parliament and unlawful assembly at Kalabu Fijian Primary School to purposefully cause instability in the country. They remain imprisoned on Nukulau Island (off the coast of Suva).

Path towards Constitutional Law

In September 2000, Interim Prime Minister Qarase told the UN General Assembly that he would restore democratic rule within two years. He set up a Constitutional Review Commission with the task of reviewing the 1997 Constitution.

On 2 November 2000, armed counter revolutionaries began an onslaught on the Fiji Military Headquarters in Nabua, with random shooting. A heated exchange of gunfire ensued, killing eight soldiers (three loyal to Commodore Bainimarama and five from the mutineers) and wounding twenty-eight. Details of the mutiny stunned the nation, especially the indigenous Fijians, who hold the army in high regard and who have had a long-standing belief that the army (predominantly comprised of indigenous Fijians) is there to protect indigenous interests and would never turn on their own people.

On November 15 2000, a High Court Justice, Anthony Gates, ruled that the Constitution (Amendment) Act of 1997 remains the supreme law of the country after a farmer, Mr. Chandrika Prasad, sought justice from the Courts. Prasad and his family had been attacked by indigenous Fijians on their farm, their animals slaughtered and their property burned. Justice Gates also ruled that the former President (Ratu Sir Kamisese Mara) was still President and that Parliament should be reconvened for the appointment of a new Prime Minster. The Interim administration immediately sought an appeal on this decision from the Appeal Court.

Justice Sir Maurice Casey, who headed the Appeal Court, ruled that Gates' judgement "does not have any legally coercive effect" and agreed that the interim government should be allowed to present evidence it was unable to present before Justice Anthony Gates. On 1st March 2001 and in a landmark ruling, Justice Sir Maurice Casey, declared in the Court's judgement that:

a) The 1997 Constitution was still the supreme law of the country and had not been abrogated;
b) Parliament had not been dissolved but prorogued on May 27, 2000;
c) The office of the President became vacant on December 15, 2000 when Ratu Sir Kamisese Mara resigned. In accordance with Section 88 of the Constitution (Amendment) Act of 1997, the Vice-President may perform the functions of the President until March 15, 2001;
d) The State was to pay $50,000 to cover costs incurred by Mr. Prasad's legal team.

Immediately after the judgement, Ratu Iloilo called himself "Acting President" to show his compliance with the decision. He was supported by the BLV/GCC to continue as President with Ratu Jope Seniloli as Vice-President. Qarase at first resigned but was eventually reappointed for the third time to the position of interim Prime Minister. Mr. Qarase has not made any major changes to his Cabinet line-up from the second interim administration (28 members) but has been reported in an interview as saying that he will be proposing additional Indo-Fijians.

Future Challenge

The political crisis is not a simple clash between Indo-Fijians and Fijians. There is conflict within the communities as well as between them. Evidence has shown that the views of indigenous Fijians are polarised. There are those that see the situation as one of indigenous Fijians standing up with force and violence to assert their rights. There are those who see the situation as one of certain politicians and political parties using racist and nationalist sentiments to get back into power after being toppled in the May 1999 general elections by

Chaudry and his multi-racial Coalition government. There is also the subtle but prominent presence of provincialism, between the East, West and North of Fiji and between the three confederacies of Burebasaga, Kubuna and Tovata. And there are disagreements and crisis within Fijian political leadership and also amongst the chiefs, who have different views. There is the view of Fijian political dominance as a necessity and there is the view that that Fiji cannot move forward with racism or any semblance of first and second-class citizens.

Indo-Fijians are as much divided, as witnessed by the hostility with which many particularly viewed Chaudry's largely Labour-backed government.

There is also the element of militarisation in Fijian society. Events of 1987 and May 2000 could set off a dangerous precedent where guns and violence become the fashionable way of resolving differences. "No Other Way", the phrase Rabuka used to describe the motive of the two 1987 coups, is becoming popular.

The challenge for Fiji, which many had hoped was addressed in the internationally acclaimed 1997 Constitution, is how to balance indigenous rights and aspirations with democratic principles of equal rights and justice. Many of the problems Fiji is facing now are a result of colonialism, mismanagement of native land leases and also of indigenous rights, governance and justice in modern times. Finding a solution will not be easy but one will have to be found. The question Fiji must ask is what type of society it aspires to have and how to achieve it.

TONGA

In Tonga, the movement for democracy and change is gathering increasing support from within and outside the kingdom. As Tonga's Human Rights and Democracy Movement (THRDM) activist, Akilisi Pohiva confirmed, the movement will continue to pressure the government and the monarchy to push for a referendum for changes to the Constitution. THDRM will continue to push for dialogue and discussion with the Tongan government and the monarchy to effect the two major changes recommended.

Recommended Changes to the Constitution

The first recommendation calls for greater power sharing in the kingdom's administration. Furthermore, it is recommended that all thirty members of the Parliament be elected and that the monarch chooses his 12 Cabinet Ministers from the 30 elected people. This is contrary to the current Constitution, which provides for 9 members elected by the people, 9 nobles elected by other nobles, and 12 Cabinet Ministers appointed for life by the monarchy.

There has been no official response from the government since 1998 when the draft constitution was submitted to the cabinet. The Tongan Government turned down a further request from the movement for a national referendum to coincide with the last general election. The pro-democracy movement in Tonga also called on the nobles to share some of the benefits of the land with the people. To date, a major part of the land is still administered by nobles, who get the full benefit of land rentals and leases.

Overseas missions' representatives based in Tonga, e.g. New Zealand, Australia and Britain, have indicated changes in their stance and pledged support to the Tonga Human Rights Democracy Movement by not funding all of the government's activities put before them.

Environment and Resources Protection

In addition to campaigning and lobbying for constitutional change, the Tonga Human Rights and Democracy Movement is also active on issues of environment and resource protection. Following the groundbreaking discovery of hundreds of unknown marine organisms in the Tonga Trench by scientists from Australia and France, the THRDM called on the government of Tonga to claim ownership over marine organisms. As stated by Mr. Senituli from the THRDM, "It is absolutely essential that the government stakes its claim to ownership over these marine organisms now. In fact, the Government and the people of Tonga should have the naming rights over these new organisms since they are found inside Tonga's legal boundaries."

Under the World Trade Organization, the United Nations Convention on Biological Diversity (CBD) and the United Nations Law of the Sea Convention, the government of Tonga has rights of ownership over natural resources, including flora and fauna, found inside its geographical and legal jurisdiction.

Blood Sampling as Bio-piracy

The Tonga Human Rights and Democracy Movement condemned an agreement signed between the Tongan government and an Australian biotechnology corporation Autogene, to collect blood samples from Tongan nationals. The agreement, concluded without extensive public debate, opens the way for the commercialisation and patenting of DNA and genetic material.

Bio-piracy is not new in the Pacific. In 1992, the US Department of Commerce filed a patent claim over the human T-cell lines of a 40-year-old woman from a Western Province and a 58-year-old man from Guadalcanal in the Solomon Islands. Again in 1993, the US Department of Health and Human Services and the National Institute of Health laid claims over T-cell lines of 24 peoples from the Hagahai Tribe in Papua New Guinea.

More recently, an agreement was reached between the administration of the Norfolk Islands and Griffith University in Australia for DNA research on the island.

Asian Migrants

The only kingdom in the Pacific is faced with problem of Asian migrants displacing the Tongans from their economic and commercial activities. According to the Ministry of Labour and Commerce, there are 849 retail outlets on Tongatapu, the capital island, 67 of which are owned by Chinese migrants, and another 31 by Tongans but now operated by Chinese migrants.

According to Mr. Senituli, "The small retail shop is the final link between the manufacturer, the importer wholesaler and the consumer. Their owners are the human face of the retail industry, for they meet the consumers everyday and they know and understand all their family, social and financial problems. The Tongan small retail shops are not simply for buying and selling of goods. They are also waiting rooms for those who are in need of social, communal and financial assistance. On top of that the families of the owners of the small retail shops are usually the highest contributors to the 'fonua', the church and family activities. As such the small retail shops are an integral part of our social, economic and cultural system. The question is whether the Asian small retail shop owners can fulfil that role?"

Children ready for dance, Te Ao Maori, French Polynesia. Photo: Palle Kjærulff Schmidt

Women with tuna fish, Tonga. Photo: Palle Kjærulff Schmidt

MARSHALL ISLANDS

March 1st marks the annual celebration of Nuclear Victims' Memorial Day in the Marshall Islands. This year, emphasis was placed on declassified materials documenting the effects of radiation beyond the four atolls (Bikini, Enewetak, Rongelap, and Utrik) recognized in the Compact of Free Association. According to US Center for Disease Control (CDC) documents, Ailuk atoll contains the single largest source of atmospherically-released iodine 131 in the world (MI, 8 Aug 1998, 1, 5). Additionally the Center for Disease Control recommends that Ailuk, Jemo, Likiep, Wotho, and Wotje receive compensation for exposure to fallout from the Bravo test of 1954. Studies such as these will be used to argue a "changed circumstances" case in the upcoming compact negotiations. The changed circumstances clause of the compact allows for a reassessment of compensation if new evidence shows the current agreement is inadequate.

Kwajalein Missile Tests

The Pacific Concerns Resource Centre (PCRC) has criticised the continuation of US missile tests at Kwajalein Atoll in the Marshall Islands, saying the latest failed test highlights the folly of the new arms race in space.

Each anti-ballistic missile test at Kwajalein Atoll costs US$100 million dollars. The overall cost of the National Missile Defense system will be US$60 billion - money that could be put to better purposes, stated the Pacific Concerns Resource Centre (PCRC) in Suva, Fiji Islands.

On 8 July, the US military tested its National Missile Defence (NMD) system in the central Pacific. A missile fired from Vandenberg Air Force Base in California released a mock nuclear warhead over the Pacific Ocean. Another missile launched from Meck Island in Kwajalein Atoll attempted - and failed - to shoot the warhead from the sky. This Exoatmospheric Kill Vehicle failed to separate from the booster rocket, and the whole device completely missed the incoming target. A similar test in January 2000 had also failed. The NMD tests are part of a US effort to develop a new Star Wars system and the US government will soon make a decision on whether to deploy the weapons system.

The Marshall Islands government is currently asking the United States to pay extra compensation to Marshall Islanders who were irradiated by 67 US nuclear tests at Bikini and Enewetak atolls between 1946-1958. How can the US government justify this expensive missile-testing program when it refuses to face its responsibility for past nuclear tests? The Nuclear Claims Tribunal in the Marshall Islands has promised compensation to hundreds of Marshallese affected by the US nuclear tests at Bikini and Enewetak. But over one third of those due to receive compensation from the US government died before full payment could be made.

Economic Renegotiations

If the Federated States of Micronesia and the Marshall Islands leaders were anticipating tough economic renegotiations with the US, they received confirmation late last year that it was going to be an uphill battle to secure anything close to the level of funding the Americans have provided for the first 15 years of the Compact of Free Association. The Compact's economic provisions expire in October – with a two-year period of grace during which funding is guaranteed in case, as is likely, negotiations can not be wrapped up by the end of 2001.

The approximately $2.5 billion ($1 billion to Marshall Islands, $1.5 billion to Federated States of Micronesia) provided by Washington, "led to little improvement in economic development," according to a detailed General Accounting Office (GAO) report in September. It is a contention that most island leaders dispute, but the GAO report is giving ammunition to American Congressmen who want to slash funding to the two central Pacific nations. Thus representatives Doug Bereuter (R-Nebraska) and Don Young (R-Alaska) in an "op ed" column in the *Marshall Islands Journal* in mid-December stated that, while some of the responsibility lay with the US, the underlying problem with the current Compact of Free Association was not the level of funding provided. "We cannot ignore the failure of the Marshall Islands government to live up to its part of the contract. Despite massive aid, hospitals and schools are in disrepair and lack basic supplies." They implied that the one-year-old government of President Kessai Note was paying lip service to the reform process and called on the government to take action. But officials in the FSM and Marshalls say that many governmental reforms about which US officials are raising questions are already in place. Marshall Islands Ambassador to Washington, D.C. Banny deBrum said that, contrary to GAO claims, the Marshall Islands modernization of the "woefully inadequate social and physical system of infrastructure left behind by the (US) Trust

Territory has not only enhanced the quality of life in the Marshall Islands but also provided the necessary foundation for private sector growth."

Federated States of Micronesia Ambassador to Washington, Jesse B. Marehalau, disputed the GAO findings and called it a "disservice" for the GAO to suggest that the US Congress should approach the new Compact package "with the notion that the Compact assistance has been wasted." But that appears to be exactly how Bereuter and Young – two key leaders in the House whose committees control money for the islands – are approaching the talks. One of the major recommendations of the GAO report is that the "full faith and credit" provisions of the current Compact funding – which have guaranteed US payments each year since 1986 – be removed from any future agreement, to give the US more leverage to insure accountability. One criticism that irks island leaders is the contention that nothing has been done with Compact money. The American-administered trust territory was jokingly referred to as the "rust territory" due to its lack of development progress in the 1970s. "If we compare development now with the trust territory period, it's much different," said Jacklick. "I hope that the US government appreciates this."

The Gambling Issue

With a vote of 17 to 7, gambling has now been banned in the islands. While the two bills presented by Senator Ataji Balos (Kwajalein) had the support of the churches and the Council of Iroij (Chiefs), the pro-gambling group consisted of three government officials and their supporters. Public hearings were devoid of debate - not a single individual spoke to defend the right to gamble - as person after person spoke against the unregulated gambling that left children hungry. The pro-gambling coalition in the Nitijela centred its concern on replacement revenue for Kwajalein, which relied on slot-machine income as part of the atoll's budget. Yet, on the Nitijela floor, as the bills were presented, an inquiry revealed that the national government had received no revenue from the taxation of casinos. In the break before the final vote, Speaker Kessai Note announced that President Kabua, Senator Tony deBrum, and Minister Phillip Muller would not be permitted to vote due to their conflict of interest as owners of casinos. Others with similar conflicts were told to withhold their votes or be fined if evidence emerged later. An additional two members withheld their votes.

Passport Scam

The illegal sale of the Republic of the Marshall Islands passports is a considerable problem to the indigenous Marshallese, as migrants are taking over their jobs. However, for rich Asian migrants, becoming a citizen of the Marshall Islands provides security for investments in the tourism industry and in competing for resources on the very limited land area that makes up the atolls of the Marshall Islands. The illegal sale of passports is also an easy way for the Asian migrants to gain American citizenship.

GUAHAN (GUAM)

Guam's economy is still in trouble due to the Asian economic slowdown. Unemployment is running at 14 percent; the health of the government's General Fund is dismal, despite an employment freeze proclaimed by both the executive and the legislature, and calls for a 10 percent budget cut; the government deficit is currently at $114 million and not being contained with any sustained effort; and the island's main economic engine, tourism, is currently running some 16 – 18 percent below the previous year.

Another current issue is that of illegal immigration into the Territory. In late June 1999, in his first ever appearance before the UN General Assembly, the Governor of Guam had already expressed his concerns. Referring to Guam's non-self-governing status as a "threat to Guam's vision for social and economic progress" he stated that, "both legal and illegal immigration under the Administering power's regime threatens the balance needed to keep our fragile economy and environment from breaking under the strain" (Gutierrez 1999a, 2). In early March 2000, Congressman Underwood introduced House Resolution 945 calling for the amendment of the Immigration and Naturalization Act to prohibit claims of political asylum from being made on Guam by undocumented foreign individuals. After touring the tent "city" of illegal immigrants on Tinian and talking with UN officials there, Underwood amended his resolution. He concluded that asylum could be allowed but that the United Nations standards, which are stricter and more effective than those provided in US immigration law, should be used with respect to Guam. He urged his colleagues in Congress to reprogram some supplemental funds from continued efforts in Kosovo and Central America to the Immigration and Naturalization Service for its work in Guam and the Northern Marianas.

Chamorro Protest Imprisonment over Land Rights Struggle

The Colonized Chamorro Coalition in Guam held two demonstrations in early January. The first demonstration was on 7 January 2000, against the sentencing of Angel Santos to six months imprisonment for continuing his protest over the US government's taking of his grandfather's land. He had defied a restraining order imposed by the US District Court and was arrested for his defiance. The Court sentenced Mr Santos to six months imprisonment. While awaiting the Court's ruling, Mr Santos went on hunger strike to demonstrate his resolve and personal commitment to continue fighting for the rights of the Chamorro Nation until justice is served.

The second demonstration was on 14 January 2000 on the occasion of a visit by a delegation of US Congressmen to inspect military bases on the island. The Coalition listed four issues for the protest as follows: 1) War Reparations; 2) Return of Excess Lands Under Federal Control; 3) Political Status; and, 4) Environmental Clean Up of Lands used by the US military and other federal agencies.

Chamorro Oppose US Missiles in Guam

The Colonised Chamorro Coalition in Guam has hit out at recent moves by the US military to deploy conventional air-launched cruise missiles in Guam, saying they will strongly oppose any further militarisation of the island.

Almost 20% of the island has been given to the US Department of the Interior as "wildlife reserves" but Chamorro activists fear that these lands could be reclaimed by the US military for further militarisation. The fear is well-founded given the recent action by the US Navy to cancel the transfer of the former US Navy ship Repair Facility to the government of Guam. The Navy now claims it may have been "hasty" in its action to downsize the bases on Guam.

The recent move by the US military is alarming and, together with the testing of the Theater Missile Defence System in Kwajalein atoll in the Marshall Islands, signals a growing militarisation of the Pacific that must be opposed and condemned.

KA PAE'AINA (HAWAI'I)

Debates on the 'Reconciliation' Hearings and the Akaka 'Recognition Bill' were the major focus of the Kanaka Maoli struggle for recognition and sovereignty in the year 2000.

The 'Reconciliation' hearings came after six years of inaction and mounting Kanaka Maoli ferment following the 1993 US Congress Apology Resolution (Public Law 103-150). Introduced by Kanaka Maoli US Senator, Daniel Akaka, the joint resolution acknowledged that the 1893 US conspiracy, armed invasion and recognition of the white settlers' provincial government were in violation of treaties between the two countries and international law, and a suppression of Kanaka Maoli self-determination.

However, on 23 February 2000, the US Supreme Court ruled in the Rice vs. Cayetano case, overturning a 1978 State of Hawai'i law by a majority of 5 to 4 Justices. This court ruling means that the law, which allows only Kanaka Maoli to vote for trustees of the State Office of Hawaiian Affairs, is unconstitutional because it was based on race. Thus, landless Kanaka Maoli who now comprise only 20% of the 1.2 million population in their homeland of Ka Pae'aina are considered racist under US law for exercising limited self-governance as wards under control of the State. According to Kekuni Blaisdell, this meant that the Kanaka Maoli were in danger of having their permanent political status determined for them by the US government, and this was occurring without their initiation, input or informed consent.

To counter fears that US federal health, education, housing and other social programmes for Kanaka Maoli would be challenged in the US courts, Senator Daniel Akaka announced the formation of a 'Native Hawaiian Task Force'. The Task Force was to represent the people of Hawai'i and the US government, and prepare legislation to protect US federal-funded programs for Kanaka Maoli by declaring Kanaka Maoli indigenous to the US. Thus, it was reasoned, Kanaka Maoli have a legal, political and trust relationship with the US similar to that of 'other Native Americans', the American Indians and Alaska Natives.

At a 29 March forum at the University of Hawai'i, pro-independence Kanaka Maoli denounced both the Rice and Cayetano positions. The Pro-Rice decision, according to Blaisdell, confirms that US colonialism with anti-Kanaka Maoli racism lives on. Anti-Kanaka Maoli racism is evident in the position, supported by the State of Hawai'i, Office of Hawaiian Affairs (OHA), the US Solicitor General and the Hawai'i Congressional delegation, which states that the Kanaka

Maoli are 'Native Americans' and that this subordinate status should be affirmed by US Congressional 'federal recognition'. In May, pro-independence Kanaka Maoli met with Senator Akaka and urged him to adhere to acknowledgements in his 1993 Apology Resolution, such as US suppression of Kanaka Maoli inherent sovereignty and right to self-determination. The delegation also stressed the importance, under Article VI of the US Constitution, for the US to abide by treaties and international law, such as restitution, as 'the supreme law of the land'.

Undaunted by criticism, Akaka's second draft legislation was faxed to the press on 3 July, but not distributed to the Kanaka Maoli people.

From the onset, pro-independence Kanaka Maoli have opposed three main aspects of Akaka's legislation:

1. The intent is to reduce Kanaka Maoli to American Indian status, purportedly to save meagrely-funded federal Kanaka Maoli programs that promote colonial dependency. This intent is linked with the US's long-range policy to maintain US nuclearism, military occupation and economic exploitation of Kanaka Maoli Ka Pae'aina, in order to ensure US control over the Pacific Basin and Rim as essential to US globalisation policy.
2. The process is to pre-determine a permanent subservient Kanaka Maoli political relationship to the US, in violation of Kanaka Maoli inherent sovereignty and right to a true and full self-determination process, based on Kanaka Maoli cultural traditions and under impartial international oversight.
3. The bill's content destroys Kanaka Maoli as a distinct people and nation with their own territory, cosmology, history, culture, language and future.

Pro-independence Kanaka Maoli argue that the majority of Kanaka Maoli remain unaware of the damaging impact of this legislation should it become law.

In spite of stormy Kanaka Maoli protests during Honolulu hearings in September, the Akaka Bill was passed by the US Senate Indian Affairs Committee. The US House of Representatives also passed it on 26 September. However, it has yet to be brought to the US Senate floor for a vote because of Republican senators' new objections to Kanaka Maoli acquiring a political status analogous to that of American Indians.

Follow-up lawsuits by pro-Rice 'equal-protectionists' against Kanaka Maoli benefits and recent community forums on culture and race, dominated by non-Kanaka Maoli, have heightened non-Kanaka

Maoli expressions of the Kanaka Maoli sovereignty issue. This has created a curious and, for traditionally sharing and caring Kanaka Maoli, a painful paradox. Colonised Kanaka Maoli are being accused of racism because of their attempts to survive as a distinct people and nation. Laws made by colonising US settlers, such as those pertaiting to 'no race-based voting' and 'equal protection', are now being imposed on the dispossessed Kanaka Maoli to deprive them of any special rights as the host people.

RAPA NUI (EASTER ISLAND)

The indigenous people of Rapa Nui, who now number around 3,000, have survived 136 years of continuous oppression by the Chilean government, which deprives them of basic human rights in their homeland. In September 1888, King Atamu Tekena, Chief of the Ancient Council, signed an agreement with the government of Chile for protection of the remaining 350 Rapa Nui islanders in exchange for sovereignty. This treaty was violated in 1891 when Chile rented the island to a British company.

In 1914, Mr. Daniel Maria Chavez, Chief of the Ancient Council, organised a struggle for land claims, fair treatment, justice and human rights. Chilean officials arrested him and tried him in a court on a ship. He died mysteriously on the ship en route to Valparaiso, Chile. Similarly, two years later, Rapa Nui King Riro died in Chile where he had gone to sign an agreement with the Chilean government.

In 1933, the government of Chile registered Rapa Nui land under Article 590 of the Civil Code, stipulating that any land without a registered owner within the territorial borders of Chile belonged to the State. In 1979, after the Pinochet coup, the Chile government decreed a new law # 2885, which empowered the Chilean president to provide titles and deeds legitimating the State inscription of 1933. In 1989, the Rapa Nui Ancient Council filed a lawsuit against the State of Chile, charging land usurpation. As a result, the government of Chile created the indigenous law, which recognises and favours the rights and cultural values of the Rapa Nui people abiding under the principles and recommendations of the United Nations for natives and ethnic minorities across the world. However, the Chilean law is detrimental to the people since it legitimises the usurpation of land within the scope of Decree 2885 and the inscription of 1933.

During the year 2000, the indigenous people of Rapa Nui continued their struggle against the Chilean law. Isolated from the main routes in the Pacific, they do not have access to legal resources with which to support their land struggle. Support for the people of Rapa Nui is an important component of the broader decolonisation struggle in the Pacific.

NORTH AFRICA

BEST COPY AVAILABLE

NORTH AFRICA

THE AMAZIGH PEOPLES

The Amazigh peoples constitute a considerable part of the North African population. Yet the governments of the North African states do not disclose the correct statistics, and a number of the indigenous peoples are Arabized. All history books confirm that the Amazigh (a word which means 'the Free' in the Amazigh language), known in some history books as 'Berbers' (as foreigners call the indigenous peoples in North Africa), are the original population in North Africa. The Tuareg living in the desert form part and parcel of the Amazigh peoples.

The Amazigh Movement

The Amazigh Movement was started by Amazigh university students in the 1960s. The objectives of the movement were, from the very beginning, as follows:

- Recognition in the Constitution of their cultural, linguistic and civilizational identity;
- Integration of the Amazigh language into the education system;
- Integration of the Amazigh language into the media;
- Recognition of human rights and of cultural and linguistic rights on an equal footing.

In the 1960s, a number of cultural Amazigh movements came to the fore in Algeria, Morocco and in the European countries to which many citizens of these countries had migrated. These associations coordinated their activities and gathered at the International Amazigh Congress at which many associations from North African countries, Europe, America and Canada took part. Later on, the Amazigh movement joined the international indigenous movement.

Since its participation in the international human rights congress for the first time in 1993, the Amazigh movement has attended the meetings of the indigenous international movement held in Geneva, taken part in the political, social, economic and cultural daily activi-

BEST COPY AVAILABLE

TUNISIA
MOROCCO
WESTERN SAHARA
ALGERIA
LIBYA
EGYPT
MAURETANIA
MALI
NIGER
CHAD
SUDAN
ERITREA
SENEGAL
GAMBIA
GUINEA BISSAU
GUINEA
BURKINA FASO
NIGERIA
DJIBOUTI
ETHIOPIA
SIERRA LEONE
IVORY COAST
GHANA
CAMEROON
CENTR. AFR. REP.
LIBERIA
TOGO
BENIN
UGANDA
SOMALIA
GUINEA EC.
GABON
KENYA
RWANDA
BURUNDI
REP. OF CONGO
DEMOCRATIC REP. OF CONGO
TANZANIA
ATLANTIC OCEAN
MALAWI
ANGOLA
ZAMBIA
MOZAMBIQUE
ZIMBABWE
NAMIBIA
BOTSWANA
REP. OF MALAGASY
SWAZILAND
REP. OF SOUTH AFRICA
LESHOTO

ties as well as in task forces of the United Nations on the rights of indigenous peoples.

The Amazigh movement's demands to amend the Constitution and take into consideration the multiple dimensions of Moroccan identity in its preamble was for many years ignored. The Arabization policy that was applied by the Nation-State following independence led to the severe discrimination, by all means possible, of the Amazigh people. The Amazigh languages were excluded from education, media and Administration. Artists were banned from taking part in national competitions because their products were in the Amazigh language. Amazigh activists from Morocco, Algeria and Libya were arrested for writing in their mother tongue. Children were deprived the use of their Amazigh names. The

BEST COPY AVAILABLE

Arabization policy prevented the majority of these peoples from acquiring an education and having access to the most fundamental aspects of a respectable life such as water, electricity, means of communication or health premises.

After many years of ignorance, arrests and outright attempts by the governments to harass the movement to silence, things seemed to develop in a different direction.

In 1998, the government recognized the Amazigh dimension of Moroccan identity for the first time in an official declaration. In a recent amendment to the Constitution in Algeria, the government officially recognized the Amazigh dimension of Algerian identity. An official institution was established for the first time in North Africa. The High Commission for the Amazighity was set up in Algeria to propose programs and regulations that could contribute to the relative integration of the Amazigh language within Algerian schools. Many other Amazigh organizations and associations saw the light of day in the Canary Islands, which in 1997 played host to the first Amazigh International Congress following its constitutive congress in 1995.

Despite some progress in the position of the official institutions, the circumstances of the indigenous peoples in North Africa have changed little. The formation of Amazigh associations in Libya is still forbidden. The situation of the indigenous peoples in Tunisia is deteriorating. Many setbacks have been noted in Morocco and Algeria in 2000.

Significant Events in the Life of the Indigenous Peoples in North Africa, Morocco in Particular

The greatest gathering of Amazigh associations in the regional seminar organized in association with the International Labor Organization in 2000

The regional seminar on Convention 169 concerning the rights of the indigenous peoples, organized on 21-22-23 January 2000 by the Tamaynut Association in association with the International Labor Organization, was an outstanding event in the history of the Amazigh movement in North Africa. Approximately fifty-five Amazigh associations and cultural and developmental Amazigh sections as well as representatives from many North and West African countries met for the first time to exchange ideas and opinions on the current situation of the indigenous peoples, examine future perspectives and propose recommendations and plans. The seminar's recommendations were dominated by the immediate adoption of Convention 169 on the rights of indigenous and tribal peoples. They then stressed that the other rights that had already been declared relating to the fact that Constitutional recognition of the cultural, civilizational and linguistic identity of the indigenous peoples should be confirmed, and that the mother tongue should be incorporated into education and media. The importance of this seminar lies in the direct meeting of cultural associations defending human rights with economic and developmental organizations.

Announcement by the Amazigh Declaration and the Constitution of the 15-member committee on May 13, 2000

One thousand intellectuals and Amazigh cadres signed a political statement prepared by the academician Mohamed CHAFIK, in which they demanded official recognition of the Amazigh character of Morocco, in other words political recognition of the cultural, linguistic and civilizational identity of the Moroccan indigenous peoples. King Mohammed VI appointed a committee made up of the head of his cabinet, the head of the Royal Committee for Education, and the official speaker of the Palace. This committee has met with representatives of the signatories to the Declaration and conveyed to them that the King is prepared to consider their demands. Yet no reply has been given so far. In May 2000, an important gathering was held to discuss the strategy of the Amazigh movement with a view to democratizing the country and the regime in Morocco. The gathering also exchanged views on how to influence cultural and political decisions. At the end of the gathering, a 15-member committee was elected, ensuring fair geographical representation of the major regions of Morocco. This committee was entrusted with the task of preparing for the Amazigh Congress to be held at the end of the year 2001. It has also held many meetings to examine the possibility of collaborating with other Amazigh associations so that the Amazigh movement could proceed along two fronts, cultural and political, as suggested by an activist from the Amazigh movement in North Africa.

Expropriations in the province of Agadir and a sit-in by the Amazigh developmental associations on July 4, 2000

The nation-state superseded the colonizer in applying the French regulations regarding the transfer of lands, forests, oceans, minerals to the French State, (subsequently the nation state), ignoring the rules of the indigenous peoples that prevailed prior to colonization. During the year 2000, the government undertook expropriations of lands and forests in the region of Tafraout, in the south of Morocco. The local population fought this encroachment on their lands with protests and complaints. Yet this was not enough to put an end to this process. They thus organized a sit-in before the parliament in Rabat on July 4 2000, leading to the opening of dialogue and to a temporary freezing of the expropriation process.

Adoption of a Charter of Education and the protest of the Amazigh Associations – April 2000

At the beginning of 2000, the Royal Committee of Education (a committee set up with no participation on the part of the Amazigh associations), announced the Charter of Education. In the view of the Amazigh associations, this Charter does not respect the cultural and linguistic identity of the Amazigh population nor does it consider the Amazigh language as an official language. The Amazigh associations denounced this Charter, for it enshrines a policy of discrimination on the basis of language and it aims at Arabizing the Amazigh through a policy of Arabization presented in a Charter abusively called 'national'.

During the meeting of the parliamentary session in April 2000, the Amazigh associations staged a sit-in before Parliament to demand that a law preserving their cultural and linguistic identity be elaborated and that the Tamazigh language be incorporated into education and the media. Yet the government banned the sit-in despite the fact that it was organized in line with all the legal formalities. Police forces descended on the main avenue where the sit-in was expected to take place in a bid to prevent the protestors from protesting or from gathering in front of Parliament.

Amazigh children prevented from registering their names in the Family record books

The authorities continued to deprive the Amazigh of registering their children with Amazigh names. A great number of the children were not allowed to register their names in the Family record books on the excuse that these names are neither Moroccan nor Arab, which simply means that everything which is not Arab is not Moroccan ! **Tunarug, Titrite, Massine** are all names of children born in 2000 and they are still deprived of their right to take that name.

The march in support of women's rights (12 March 2000) – abandonment of the government's plan for women's involvement following a counter march

The majority of North African women suffer from discrimination in various ways. Illiteracy amongst women is sometimes as high as 90%

(in Morocco). This situation forces them to do only minor jobs for little return. Although the Constitutions of the North African countries recognize equality of political rights in theory, women are still deprived of these rights. This is because elections are still being rigged and the will of the people is not respected in North Africa. As to equality with regard to civil rights, this does not figure either into the Constitutions nor into current legislation.

The Amazigh woman suffers from a double discrimination. In addition to the said sufferings of women in general, the Amazigh woman is also deprived of constitutional recognition of her linguistic, civilizational and cultural identity. She has also been denied some other positive rights, which the ancient Amazigh regulations bestowed on her, such as *Tamazzalte*, a custom stipulating that the spouse has the right to own half the properties her husband acquires following marriage. Moreover, she has been denied the right to assume an effective role in cultural and political life because she is culturally marginalized, a direct result of not using the Tamazigh language in the media, the administration or in official life.

Some of the feminist associations organized themselves into a feminist movement, a framework that allows them to struggle for establishing equality, abolishing discrimination, and attempting to make the Moroccan government withdraw its reservations relating to the Convention on the abolition of all forms of discrimination against women, on the basis that some of its articles do not abide by Islamic legislation.

Because of all these things, and in order to apply the Beijing plan of struggle for women's rights, the feminist movement organized a huge march on March 12, 2000, to support a proposal put forward by one Minister to apply a plan for involving women in development. Yet the government did not proceed with this plan and the Minister who proposed the Plan was discharged from office in the government reshuffle in September 2000.

The discovery of oil and gold and the expropriation of Amazigh lands without consulting their owners in September 2000

In September 2000, it was officially announced that oil and gold had been discovered in marginalized lands that had been excluded from any developmental plan. This was the first time such news had reached the media.

It was announced that a big quantity of oil had been discovered in the Amazigh region of Talsint, in the south-east of Morocco. The lands of the local population were used without even consulting their owners, according to colonial rules promulgated by the French and used by the nation-state, taking into consideration neither its citizens, the nation nor the new international standards stipulated in Convention 169 on indigenous peoples in 1989.

The discovery of gold in the Amazigh region of Ta Ta came at almost the same time. Once again, the same colonial' rules were applied that devastate the relationship between the people and the land on the basis of cultural and civilizational identity.

Despite all these riches, the State still refuses to recognize the minimum rights recognized internationally for indigenous peoples by Convention 169 on the rights of indigenous peoples and the International Declaration on the Rights of Indigenous Peoples.

Stifling of journalists, suspension of three newspapers, deterioration of public liberties, arrest and trial of protestors on the occasion of the International Day of Human Rights, December 2000

After the young King Mohammed the Sixth acceded to the throne following the death of his father in 1999, positive signs of change began to loom on the horizon. Yet some negative events still took place, such as the trial of a number of journalists, the concomitant suspension of three newspapers for publishing news relating to the purchase by the Minister of Foreign Affairs of a villa in Washington and for publishing a letter from an opponent of the Monarchy dating back to 1974, pointing out that the current Moroccan Prime Minister took part, along with the generals, in the failed 1972 coup d'état against King Hassan II.

The three newspapers were banned for 40 days. They were subsequently allowed to continue publishing. The year 2000 witnessed the greatest deterioration in the freedom of expression and in democratic liberties.

Activists from the Islamic Right and the Marxist Left chose to commemorate the day of Declaration of International Rights (10 December 2000) by organizing a peaceful march. But this march was banned and many activists were arrested, some of them are in jail and others are awaiting trial.

According to the international report on human development, Morocco moved from position 125 to 126 at the end of the year 2000.

Organization of the biggest gathering on land rights in Agadir 17-18 February 2001

The Amazigh movement is changing from a cultural into a social movement. The year 2000 opened with the first meeting on the rights of indigenous peoples attended by cultural and developmental associations. The latter organized the largest ever gathering on rights relating to land in Agadir on 17-18 February 2001. This gathering examined the current situation and protested against the fact that colonial laws still govern the relationship between the local population and the land. A representative of the Human Rights Center in Geneva took part in this meeting. The meeting recommended ratification of Convention 169.

People's hopes in the two governments of alternation shattered

All governments since independence have been the product of rigged elections, as attested to by the parties participating in these elections themselves. When the late King Hassan II appointed a government presided over by a socialist leader, hopes that the situation of the masses would improve began to appear. These hopes were reinforced when the young King came to the throne announcing 'a new concept of authority', constituting a committee entrusted with compensating the victims of arrest and torture during the rule of his father and addressing a letter on the occasion of the International Day of Human Rights.

Although the government of alternation came to power as a result of rigged elections, hopes for change were still strongly felt. Yet on February 4 2001, this government ended its third year with the situation of the population deteriorating on all the sides, political, social and economic. Regardless of the promises of change, corruption issues broke out and some negative events still persist, such as the trial of the young officer Adib in February 2000. He was jailed for three years for disclosing the corruption of his superiors. Children are still forbidden from using their Amazigh names, a sit-in of the Amazigh associations was banned, journalists were tried and newspapers were suspended in September 2000.

Summary

Despite all these events, the government still refuses to enter into open dialogue with the developmental and cultural Amazigh associations. It talks of democracy but exercises tyranny, and it talks of dialogue and yet still denies the rights of its citizens.

Nevertheless, the Amazigh movement pursues its peaceful means to achieve a true democratization of the State and to guarantee the right of participation in the cultural and political life under a democratic system that respects pluralism and the cultural and civilizational identity of the Amazigh peoples.

EAST AFRICA

BEST COPY AVAILABLE

EAST AFRICA

ETHIOPIA

Human Rights in the Gambela National State

The Ethiopian government claims to respect all fundamental human rights, to be dedicated and committed to the basic democratic principles of good governance, to justice, equality, and the rule of law. In practice, in almost all these basic areas of humanity, it demonstrates the contrary. Opposition political parties are not allowed to participate freely in public activities, their members and supporters are intimidated and affected by numerous breaches of the law and unconstitutional practices.

These have been extensively reported on in the past, during the elections of 1995 and again last year.

Numerous reports, notably by Amnesty International and the US Department of State, have been issued regarding the Ethiopian government's performance on human rights. The government has been criticised extensively. The latest report of the US Department of State, issued in February 2001, has this to say:

> *"...The Government's human rights record remained poor; although there were some improvements in a few areas, serious problems remained. Security forces committed a number of extra judicial killings and at times beat and mistreated detainees. Prison conditions are poor. Arbitrary arrest and detention and prolonged pre-trial detention remained problems. The Government continued to detain persons suspected of sympathizing with or being involved with the [Oromo Liberation Front]. The Government continued to detain and deport without due process Eritreans and Ethiopians of Eritrean origin. Since the outbreak of the border conflict in May 1998, as many as 75,000 such persons have left Ethiopia for Eritrea; the vast majority were deported, although a small number left voluntarily.... Although prompted by national security considerations, the expulsions and detentions raised fundamental concerns regarding arbitrary arrest and detention, forced exile, the forcible separation of families, and nationality issues, as well as the hardships and financial losses suffered by those who were detained or expelled. Despite some efforts, the judiciary continued to*

BEST COPY AVAILABLE

> *lack sufficient trained staff and funds, which limited its ability to provide citizens the full protection provided for in the Constitution..... The judiciary also showed some signs of growing independence. The Government infringed on citizens' privacy rights, and the law regarding search warrants was ignored widely.*
>
> *The Government restricts freedom of the press and continued to detain or imprison members of the press; however, fewer journalists were detained than in previous years. Most were accused or convicted of inciting ethnic hatred, committing libel, or publishing false information in violation of the 1992 Press Law. Journalists continued to practice self-censorship.... In July, legislation to create a constitutionally mandated Human Rights Commission and office of the ombudsman, which was passed in October 1999, entered into force; however, neither entity was operational at year's end. The Government generally respected freedom of religion; however, on occasion, local authorities infringed on this right. The Government restricted freedom of movement.... Violence and societal discrimination against women, and abuse of children remained problems....The exploitation of children for economic and sexual purposes remained a problem. Societal discrimination against disabled persons was a problem. Discrimination against religious and ethnic minorities continued. Child labor, particularly in the informal sector, continued to be a problem. Forced labor, including forced child labor, was also a problem, and there were reports of trafficking in persons...."*

This certainly covers and reflects the general suffering common to all Ethiopians, irrespective of their ethnic origin, religious beliefs, geographical location, or social and economic background. However, the focus of all these reports remains largely limited to the centre, and to the "more developed" Tigrai, Amhara, Oromo and Southern Peoples states.

Details of human rights abuses against the indigenous peoples in the "less developed" peripheral states, Gambela, Afar, Somali, and Benshingul-Gumuze, which have common agro-pastoral economic and social backgrounds, have received far less attention.

In fact, human rights conditions in these lowland states provide exact details of the Ethiopian government's lack of commitment and respect for the internationally accepted human rights standards it claims to accept and implement. In these areas, opposition political parties, dedicated to improving the livelihoods of their people, find their members regularly mistreated, imprisoned, tortured, dismissed from civil servant posts, detained without trial, even killed. The local state governments, largely controlled by the ruling Ethiopian Peoples Revolutionary Democratic Front authorities in Addis Ababa, demonstrate a complete lack of interest in involving the general public, in promoting a culture of democratic rule and good governance, of freedom of expression and speech. The result is widespread practice of human rights abuses that are largely ignored.

Development issues, vital and particular to the indigenous peoples of these regional states, are routinely ignored by both the federal government and the local administrations, or kept secret. The people remain marginalized and neglected, unaware of social, political and economic activities in their own homelands. The general public in these national states is unable to participate actively in issues that directly affect their lives. Policies and programmes, though frequently claimed to incorporate local interests, are regularly imposed without consent or consultation.

Arrests and Detentions in Gambela National State

The Gambela State government recently launched a new crackdown, with the arrest of at least seven leading members of the oppositional Gambela Peoples Democratic Congress (GPDC) and community elders. They are:

- Ambassador Ophato Wa-Aliwo;
- H. Ogud Wu-Nyigwo (Capt.), a Gambela elder arrested in Abwobo district and now in Gambela prison;
- Omot Wu-Ojulu (Mr.), a member of the Gambela State Council, also arrested in Abwobo, and taken to Gambela prison;
- Ajau wu-Odol (Mr.), arrested in Gambela town and held in Itang prison;
- Okony Nyu-Omot (Mrs.), arrested at Itang and then transferred to Gambela prison;
- Beay Nyu-Ochar (Mrs.), also arrested at Itang and transferred to Gambela prison;
- Kuwot Wu-Teferri (Capt.), a member of the Gambela State Council, arrested in Abwobo district and now held in Gambela prison.

Ambassador Ophato Wa-Aliwo was released on bail after five days; the others are still (as of April 2001) held. No charges have been made against any of them. The arrest of Omot wu-Ojulu and Kuwot wu-Teferri, both members of the Gambela State Council, is in breach of the constitutional rights of the elected members of the state council.

These are only the latest detentions in a long list going back several years.

In May, 2000, the ruling Gambela Peoples Democratic Front (GPDF), the EPRDF's surrogate party in Gambela State, claimed an overwhelming victory in the general election. Claims by the opposition GPDC of widespread human rights abuses against its members and supporters were ignored by the government, as was the widely reported intimidation carried out by EPRDF soldiers against local people during the election campaign. It is common for youngsters to be picked up and detained in military garrisons, in the town centre or out of town. There they are severely beaten by the soldiers, sometimes leaving them with lasting injuries. Some have been issued with death threats should they remain in the region. The result has been to introduce a climate of fear. Many who have undergone such brutal treatment do not dare to talk about their experiences for fear of retaliation, concerned for their own safety if their names should appear in public. Many Anuak are fleeing the region, in some cases even across the border into Sudan; other ethnic groups in Gambela State are suffering equally.

In fact, members and supporters of the GPDC, the only opposition political party in Gambela, have been targeted since 1998. Many remain in detention without trial, others have disappeared or been killed. Today, more than 300 individuals accused of membership of the GPDC, or of supporting the party, are held in the appalling and over-crowded prisons of Gambela State. A few months ago, it was reported that Omot wu-Obang Onugi, one of the founder members of the GPDC and a former head of the Planning and Economic department of the Gambela State Council, had died in Gambela prison. He had apparently been denied access to medical facilities and suffered from serious mistreatment while in detention.

Many others are reported to be in critical condition for the same reasons:

- Last year, two Anuak, Gog wu-Omot and Abulla wu-Okello, were killed in military garrison posts outside Gambela town.
- Five members of the Gambela Peoples Democratic Congress, including the prominent political activist, Abulla wu-Obang, disappeared in Gambela town. Abulla wu-Obang was released from Gambela prison recently after being detained for 2 years without trial; Omot wu-Obang, Gurnyang wu-Obang, Ochaan wu-Okello, and Omot wa-Akway are still missing.
- Among the few educated Anuak are Opumo wu-Oboya and Ojulu wu-Bach. They were arrested in 1998 as a result of their active participation in forming the GPDC. Neither have been tried or even charged.

Local Elections

Local elections have recently been held in several areas of Ethiopia. There has been no information as to when they will be held in Gambela State. It is now believed that they will not take place until the next countrywide general election, five years from now. This is because of the difficulties the ruling GPDF had in winning a majority in the general election despite the corruption of the electoral system. The municipal positions for Gambela should be filled though a democratic election. Instead, it appears the GPDF is appointing people it sees as loyal, its own members, to fill posts without taking the risk of allowing even controlled elections.

Ethnic Conflict

Another danger is the growing threat of ethnic conflict. Already, conflict between the Anuak and the Nuer, who are the third largest ethnic group in Southern Sudan, is spreading to other areas of Gambela. There has been no sign of interest by either the federal government or the regional government regarding what has become almost chronic ethnic violence. Many Anuak have lost their lands and now live as refugees following clashes. Hundreds from Jokau and Akobo districts are displaced every year without any government interference. There is widespread suspicion that the government is actually encouraging tensions between the Anuak and the Nuer in order to keep control of a region that was virtually autonomous prior to the 1974 Ethiopian revolution. It was the revolution that largely destroyed traditional Anuak political institutions and culture, and lost the Anuak control over their territories.

There have been recent reports that over 20,000 armed Nuer have crossed into Anuak territories never previously threatened by their traditional foes, and settled along the banks of the Gilo River. Despite this move, which will destabilise the whole region, the government has remained silent. Escalating conflicts are also reported among different Nuer clans in Jokau and Akobo districts, and again there has been no government response. Tension between the Majanger (Ojang) and settlers from different parts of the country in Godare district is also rising and actual conflict is now likely. The Majanger are being displaced from their homelands by huge trading companies involved in the destruction of what is now the only remaining forest in Gambela State. The very future of the Majanger is under threat from highly profitable business activities that ignore their suffering as their environment and their way of life is destroyed.

Oil Exploration

The recent oil exploration deal signed between the Ethiopian government and the Gambela Petroleum Corporation (Pinewood Oil Company of Canada) has raised great concern among the Gambela community in the region as well as outside the country. The deal remains a secret between the Ethiopian government and the Canadian Oil Company, Pinewood. The indigenous peoples of Gambela State, the claimed beneficiaries, will certainly be affected by the investment of this foreign company. However, they have not been consulted at any stage of this alleged "development" plan, nor have they been informed of any of the details of the agreement. Even most senior local government officials, council members and community elders have not been informed about the government plan for their own lands. At every level, the Ethiopian government action is in clear contradiction to all basic constitutional principles as well as the international instruments, treaties, and protocols it has ratified and signed.

Not surprisingly, the indigenous Anuak are seriously worried by the potentially devastating effects of such a development project being implemented without either consent or much apparent planning. In the past, several such development projects have been instituted, claiming that they would lead to significant improvements. They have included such projects as the Abwobo (Abobo) State Farm and Alwero (Alworo) irrigation dam, still not in use to this day. These both deprived local people of large areas of fertile land, displacing them without any compensation and denying them access to ancestral burial sites, forcing people to become refugees in their own territories. Over 60, 000 people from the highlands were settled in Anuak lands, forcibly displacing the previous owners. The results have included a significant intensification of the levels of poverty, alcoholism and suicide among the Anuak, as well as other psychological, and emotional effects.

Nor is the oil deal the first government initiative affecting local peoples' ways of life and the environment. As early as the 1970s, there were attempts to clear Anuak lands along the Openo (Baro) River. This was blocked by the efforts of the international community, with the active participation of the European Commission (EC) and Anti-Slavery Society campaigns, ending the threat to Anuak society. Now, the current Ethiopian government, which has neglected, ignored and marginalized indigenous peoples, is attempting to undertake exactly the same developments again.

Given negative past experiences of development projects, the Anuak will resist the implementation of so-called "development" projects that are implemented without consultation or discussion.

They are already highly suspicious of the strategy of pilfering resources, a strategy that contributes nothing to social welfare and to the economic performance of Gambela State. Such projects, ignoring the importance of indigenous participation and representation, are all too liable to failure, bringing disaster to human resources, wildlife, and the environment in general.

Gambela is one of the under-utilised potential tourist areas in Ethiopia, with numerous varieties of wild animals and large numbers of different fish in the rivers, particularly in the areas targeted for petroleum exploration!

The current problems of Gambela cannot justify implementation of such an ambitious and destructive project. The indigenous people live from subsistence agriculture, hunting, gathering, and fishing. There has been little attempt by the government to involve them in any of the major economic activities of the modern world. It is no surprise to see that the benefits of such environmentally and socially destructive projects are not intended to benefit the indigenous peoples of the area. Moreover, additionally, social and economic institutions remain inadequate and will be unable to sustain or cope with the major health threats that will result from the implementation of this project.

The specific areas targeted by the government for exploration are: Adhura and Jor, both very short of health facilities. Both contain major fishing rivers, the Gilo and Adhura (Adura), much used by local indigenous people as a main source of food. The environmental effects of this project will be devastating on the Anuak community there, and will seriously reduce alternative food sources for the population of Gambela as a whole.

In fact, the deal threatens the destruction of the Anuak way of life, their culture and tradition, as well as the loss of control over their territory.

The previous regime had little regard for the survival of Anuak political institutions and culture, nor indeed for their very survival as a people, and the very existence of the ethnic group came under threat. Little has changed. It is widely believed that the present high level of human rights abuses against the Anuak is a calculated move to realise the long-term Ethiopian government plans, which have yet to be revealed.

Indeed, the oil deal, from which the Anuak are excluded, could easily lead to the complete disappearance of the Anuak. It is a concern that is widely shared by other indigenous people in the state, who see themselves isolated from the government in Addis Ababa.

KENYA

The Announcement of the Results of the Population Census

The results of the 1998 Population Census were announced in late 1999 and, for the first time in the country's history, the figures were broken down by district rather than by ethnic group. While the new style of presentation of figures is said to help reduce the significance of the ethnic or "tribal" factor (since it makes it difficult to deduce population figures of any ethnic group), it also tends to conceal the negative effects of high rates of migration into indigenous peoples' territories. Such migration has reduced the resource base of marginalized indigenous peoples and many of them have been made quite vulnerable as a result. This is in addition to becoming minorities in their own areas and the problems of being dominated in the political, social and cultural spheres.

The Constitutional Review Process

Over the past several years, Kenya has been trying to carry out a constitutional review process in order to change the constitution before the next elections in 2002. The process began with pressure being exerted for constitutional review prior to the last general elections at the end of 1997. Unrest and violence ensued. As a consequence, the parties represented in parliament formed the Inter-Parties Parliamentary Group (IPPG) for the purposes of directing the process. This group was later replaced by the Inter-Parties Parliamentary Committee (IPPC), which then organized a series of meetings with all stakeholders to discuss the modalities of constitutional review.

Negotiation among members of the IPPC then took place and was concluded with changes being made to the Constitution of Kenya Review Act, which was to form the basis for the review of the constitution. The review of the Act was finalized by the end of January 1999. However, application of this new law soon reached a deadlock when members could not agree on the formula for sharing out the 25 seats between the various political parties. Besides this, there was also disagreement on whether or not the review process should be undertaken by ordinary citizens or by their parliamentary representatives. The President contended that ordinary citizens, represented by the synonym of "*Wanjiku*" did not have the capacity to review the constitution, and that parliament should carry out the task on their behalf. After one full year, the deadlock eventually led to two parallel processes: the Ufungamano Initiative and the Parliamentary Group.

The Ufungamano Initiative and the Parliamentary Group

The Ufungamano Initiative started the process with a meeting organized by religious leaders to which all the 54 stakeholders named in the Review Act as amended were invited. The meeting was held at Ufungamano House, hence the name. Following this meeting, a Steering Council was formed to spearhead what was later to be called "a people-driven constitutional review process" to distinguish it from the "parliamentary review process". The Ufunamano process swore in commissioners and started collecting people's views on the proposed new constitution. However, since most members of the initiative were unelected by the people, their process was said to lack the legal mandate to make a new constitution. Doubts were also expressed as to how a constitution drafted by this team - which is outside parliament - would be implemented within the existing law.

Parliament for its part also set up a Parliamentary Select Committee to review the Constitution of Kenya Review Act and proposed some amendments to jump start the stalled process. It also allowed parliament to guide the process. The report of the Parliamentary Select Committee was adopted, a bill drafted, debated and enacted. A commission of 15 persons was appointed, chaired by Prof. Pal Yash Ghai, a member of the Minority Rights Group. After some disagreement, the two groups finally came together in the early part of 2001 and agreed on the basic principles of the Constitutional Review Act. The constitutional review process is now said to be on course and might be completed before the next general elections in two years.

Significant Areas in the Constitution

Under the Constitutional Review Act, the main areas to be examined by the review commission are as follows:

The composition and functions of the State organs; federal and unitary forms of government; existing constitutional organs, good governance and human rights; the electoral system; the judiciary; local government; property and land rights; public finances; citizenship; socio-cultural obstacles; the rights of the child; succession to office; treaty-making and implementation; principles directing State policies; and any other matters connected to the above. Some of these areas have a bearing on the lives of everyone including marginalized indigenous peoples as elaborated below.

The ***composition and functions of the State organs*** is essentially the separation of powers of the three branches of government - the executive, legislature and judiciary – to allow for a balance of power and check excesses of each one. The present constitution has granted the executive more power than is necessary at the expense of the other branches. No doubt a process that streamlines the State organs will be deemed beneficial to all citizens.

The choice between a ***federal versus a unitary form of government*** is one topic that dichotomises opinion, where the majority and more dominant communities find themselves on one side and the minority and more marginalized communities on the other. The present constitution of Kenya provides for a unitary form of government where power is centralized and the government exercises its power directly in all parts of the country, at the provincial, the district, the location and sub-location levels. Since Kenya has always operated under a unitary form of government, the communities - who do not feel that they are adequately represented in all administrative levels - have reached the conclusion that the problem is the centralization of power. They therefore propose change that allows for the devolution of power to the regional and district levels. In this way, they hope to exercise some autonomy in the management and control of their own affairs and resources, particularly land.

But discussion of a federal system of government in Kenya evokes feelings of fear and discomfort among the majority and more dominant communities for very specific reasons. While federalism exists in many parts of the world – the USA, Germany and Ethiopia are frequently quoted examples - it is not always clear what form it would take in Kenya, although the system known as *Majimbo* (from *jimbo* or region) had been the hallmark of the first main opposition party, the Kenya African Democratic Union (KADU) in the 1960s but it was defeated by the ruling party, Kenya African National Union (KANU).

A type of *majimbo* system was contained in the constitution that existed at independence. In that constitution, the country was divided into seven self-governing regions or jimbos along the lines of the present provincial boundaries. Each *jimbo* would have its own parliament, judiciary and executive, while the federal government would deal with matters relating to defence, foreign policy, foreign trade and any external contact.

The main fear of the *Majimbo* system arises from interpretations of the type of federalism that might be considered. According to one interpretation, the regions might wish to be ethnically pure, meaning that other ethnic groups who were not indigenous to that particular region would be expelled. This expulsion would bring about ethnic violence. For this reason, any possibility of introducing a *majimbo* form of governance is bound to be rejected by the dominant communities and welcomed by the marginalized indigenous communities, who feel overwhelmed by myriads of migrants flocking into their areas and taking away resources that rightly belong to them.

Given Kenya's history of ethnic tensions and individuals in power using their position to benefit their own communities at the expense of the rest, these reactions do not come as a surprise. Indeed, given the enormous power of the executive, the government has unilaterally settled people on land belonging to the weaker communities without any form of consultation or compensation, but never vice versa. At times, this has resulted in the attack on or eviction of migrants and a culmination in ethnic clashes. Enoosupukia, Mt. Elgon and Likoni are areas where ethnic conflicts were reported in the early and mid 1990s and they still pose a serious threat in other parts of the country.

Another reason why the form of governance creates differences of opinion is that a unitary form of governance is also perceived to tend towards uniformity in ways of doing things: one language, one culture, one set of structures for all, etc. This is perceived to be diametrically opposed to a system that allows for some diversity, an element to which most marginalized indigenous communities relate well, on account of the prime value they attach to their rich and largely still functional socio-political and economic systems. Following European colonialism and subsequent re-colonization by the more dominant communities, indigenous systems are threatened with extinction, and if a federal system is likely to be more sensitive to such sentiments, then it promises to be the choice for such communities. Because of these reasons, this particular point in the constitution will remain a contentious issue and one which indigenous peoples will always follow closely since the outcome is bound to have an impact on their lives in one way or another.

Existing constitutional organs, good governance and human rights is another area that is bound to be universally beneficial since it focuses on the essentials of a democratic society: transparency, accountability, commitment to the rule of law and the observance of human rights. The proposed constitutional review is expected to come up with a strong Bill of Rights and provisions confirming the country's commitment to the basic principles of democracy, fundamental freedoms and protection of human rights.

Besides the constitutional review process, which has tended to dominate a good part of these past two years, other events of a national nature include the creation of a number of commissions to deal with major public concerns. One is the Akiwumi Commission to look into ethnic clashes and the other is the Njonjo Commission to look into matters relating to land.

The Akiwumi Commission

There is very little to write about the Akiwumi Commission because, although it was mandated to examine the causes of ethnic clashes and come up with recommendations on what action to be taken, it is now two years since the commission completed its task and yet the results have still to be released. The findings of the commission would be very important in understanding the causes of ethnic clashes so that sustainable means of mitigating and controlling them can be sought.

The Njonjo Land Commission

Unconfirmed but plausible reports have it that the Njonjo Land Commission was formed in order to give the impression that something is being done about the numerous irregular land transactions in the country. One case that hit the headlines is the famous Loodoariak/ Mosiro Case, in which land was demarcated on paper and titles fraudulently issued to officials of the Ministry of Lands and others without the knowledge of the indigenous Maasai community who are ordinarily resident there. Since the land was a "first registration," according to the Laws of Kenya, it could not, apparently, be challenged in court. A new bill needed to be passed in order to correct the injustice.

With the help of the organisation "Survival International", a new Bill was drafted and lobbying was done to have it passed. It was published in the official Kenya Gazette and discussed in Cabinet. But, that was as far as it went. It was said that highly placed government officials, along with their relatives and friends, would stand to lose illegally acquired land. The next thing was the setting up of the Njonjo Land Commission with a mandate to investigate and come up with solutions to land laws that need to be amended, to report on land that was illegally alienated and suggest solutions for the return of such lands.

The commission was supposed to have given a progress report early this year but it is still collecting views from the public. It will be a long time before the report is finalized and made public, if at all, although the chairman is on record as having promised that it will be done. There has been criticism that the commission may not be fully independent and that, since there are many highly placed people whose interests would be affected, it is possible the Commission's report may never see the light of day. And this would be to the detriment of peace in the affected areas of the country. Already, the people of Loodoariak and Mosiro have attacked and chased away persons trying to build structures on the land, and claiming to have title to it. And despite the existence of very clear regulations governing conditions for issuing loans, banks have allowed the mortgaging of those titles before it could be verified as to whether or not the land truly exists and whether it is viable for the purposes for which it is being mortgaged. This too is illegal. It is mainly marginalized indigenous peoples who are most affected by the outcome of the Njonjo report.

The Drought and its Effects

Over the past two years, Kenya has experienced a very serious drought that has resulted in the death of livestock and people. Officially, 3 million people - mainly pastoralists - were reported to have been left totally destitute. Since wildlife has also died in large numbers, hunter-gatherers are also affected. Some farming communities, who are usually food secure, were also not spared. The drought was first reported in northern Kenya and it spread to the south. The Samburu, Borana, Turkana, Laikipia Maasai, Rendille, Pokot, Somali and others all travelled south in search of pasture. The southern pastoralists moved to Nairobi and parts of northern Tanzania, having negotiated access with the communities there. The move was so great that, after the drought, the Kenyan government thanked the Tanzanian government for allowing the Maasai of Kenya to graze their stock during one of the worse droughts. Although an alert was sent relatively early, nothing was done about it until long after people had started dying of hunger. Then the World Food Programme and other relief agencies started moving in maize rations to the affected communities.

In the meantime, in order to ensure the survival of some herds, livestock had to be moved almost everywhere in search of pasture - private farms, national parks, forest reserves, recreation spots in the city and even to the compound of the State House in Nairobi. The movement of livestock created conflict, some of it real and some imagined. The real conflict was when the livestock was reported to have destroyed some crops on which farming communities depend.

But the imagined conflict was when the herds were moved into expansive private ranches with hardly any stock and into forest reserves and National Parks for the duration of the drought. Environmentalists complained bitterly about destruction of the forests by livestock and farmers called on the government to evict livestock from urban centres.

The drought brought to the fore the intensity of bias against pastoralists and their herds, both at the local level where legs of cattle were cut, and at the national level. In the face of so much desperation, the government, which is usually not very sympathetic about the use of reserved forests and National Parks, seemed to be rather understanding of the desperate situation. It even announced the imminent opening of the Kenya Meat Commission as a rescue measure to assist pastoralists in marketing their starving stock, an impossible feat given the fact that the factory had been closed for so long and the machinery was rusted. However, it gave some false hope to the herders.

The livestock that was moved to the forests perished in large numbers from disease and poor weather conditions. At the end of it all, high percentages of herders have either very few or no livelihood at all and are totally dependent upon relief food. Following the rains, while some farming communities have received seeds to restart sustainable livelihoods, few herders have. And at any rate, their areas are too arid for crop cultivation. What they need are seeds in the form of young stock to facilitate restocking and to enable them to cease being dependent upon relief food.

Local Processes

The last two years have witnessed the demise of the Kenya Pastoralist Forum but also the birth of many small indigenous initiatives as well as wider individual community consortia and networks. The Borana have initiated the Movement for the Empowerment of Local Initiatives (MELI) and the Samburu have started Poverty Alleviation Awareness and Nutrition (PARAN) incorporating many small Community-Based Organizations (CBOs). And, besides numerous small organizations, the Maasai have also started the Maa Pastoralist Council that will bring together all Maa-speakers including the Samburu, Ichamus, Ilaikipiak and Ilparakuyo and others across the political divide. The Pokot for their part have also developed TOMWO into a regional cross-border network and have managed to involve quite a substantial number of Pokot. While these initiatives may be hampered by communication problems given the vastness of the areas and other factors, their existence reflects awareness and interest in self-determining their future in the context of serious neglect and exploitation. The initiatives will also reduce duplication of effort and facilitate the sharing of information and experiences, hence an easier search for possible solutions to common problems.

The campaign for the protection of the rights of the Ogiek people has been gaining force during 2000 and 2001. The Ogiek indigenous people are hunter-gathers living in and depending on the forests of the Mau escarpment. The area has been declared a protected area for watershed management by the Kenyan authorities, without regard for the customary territorial and foraging rights of the Ogiek. At the same time, the Kenyan government authorities have done little to stop encroachment and logging in the forest, they have allocated lands within the Mau forest to outsiders and tried to evict the Ogiek. The Ogiek took the matter to court and in 1997 the High Court declared an injunction on any further land allocations until the dispute had been resolved. Despite this injunction, the Ogiek have suffered continued harassment and threat of eviction, the latest being the government's announcement that 47,000 acres of Mau Forest would be degazetted and thus available for settlement by outsiders. The Ogiek have two court cases pending.

Women's Issues

There have been a number of interesting events in recent years that may have an impact on the situation of women. The Beijing Plus Five conference, which took place in New York, created pressure for a bill to be passed in Kenyan legislation establishing Affirmative Action. The discussion reached the floor of parliament but it has still to be finalized.

Meanwhile, the election of the first woman chair of the Law Society of Kenya has been an historic event. There is much excitement among women, who hope that women's issues will now be better articulated. The new chair, Raychelle Omamo, indicates that one of her priorities will be legal education.

Towards the end of the year 2000, a Maasai women's organization known as Reto organized a Maasai Cultural night, which brought together all Maa-speaking peoples from Kenya and Tanzania. The purpose was to raise funds to establish a gallery and resource centre for Maasai art; to establish a language school to teach urban children the Maa language, which is in danger of extinction; and to establish a facility for holding discussions and deliberations on issues of common concern for the purposes of seeking solutions.

The event was marked by song and dance, poetry, games, drama on topical issues of concern and cultural foods. Those who attended acknowledged the fact that the event was an historical one since nothing of the kind had ever been held before and that it should be held annually. Although the event took half the night, some people suggested that more time be allocated next time and that each event should address a particular theme. One or two competitive men expressed shock that women were becoming better than men!

TANZANIA

Overview of Indigenous Peoples of Tanzania

The indigenous peoples of Tanzania, as discussed here, are the hunter gatherer communities of the Hadzabe and Ndorobo, along with the pastoralist Barbaig and Maasai[1]. This summary discusses issues of primary concern to indigenous peoples in Tanzania over the last two years, i.e. 1999 and 2000.

Hadzabe and Dodorobo Hunter-Gatherers

The Hadzabe are descendants of the bush-manoid race and, until recently, were known in Tanzania as ***Kangeju, Kindiga or Tindiga***. It is believed that the name Tindiga[2] was coined by the Nyisanzu, an ethnic community neighbouring the Hadzabe. In recent years, they have rejected these other names in favour of Hadza (pl. Hadzabe) which, in their language, means a person.

The Hadzabe are often thought to be related to the Sandawe of Dodoma since they both speak a click language. The Hadzabe have a distinct tribal identity and little else in common with their neighbours. They live in the semi-arid land surrounding Lake Eyasi in Northern Tanzania, where they occupy an area of about 25,000 square kilometers traversing Mbulu, Iramba and Meatu Districts in Arusha, Singida and Shinyanga regions. Around fifty years ago, the Hadzabe occupied twice their present territory, which has since been encroached upon by the Iraqw, Nyisanzu, Sukuma, Barbaig and others.

The Ndorobo[3] neighbour the Maasai in Kiteto, Simanjiro and Ngorongoro Districts of Arusha Region. They constitute a small minority in the region and in Kiteto District they live in the following villages: Amei, Loolera, Kilimoto, Palango, Iltirkishi, Enkusero, Namelok, Napilukunya, Isinya, Kitwai and Nkapapa.

Although both groups are basically hunters they also gather wild berries, tubers, roots and honey, which used to constitute about 80% of their food supply, particularly during the dry season. In recent years, however, food insecurity has become a recurrent problem affecting the hunter-gatherers and, on occasions, the government has provided food aid. However, it has often been supplied at the wrong times.

In recent years, some government development programmes have attempted to turn hunter-gatherers into farmers and livestock keepers. The Hadzabe have commenced cultivation of millet, maize, cowpea and, to a lesser extent, cotton in Munguli, Mongo-wa-Mono and Yaeda Chini. Other crops include maize, millet and groundnut. The government provided the villages with ploughs and some cattle but the latter were stolen, and the ploughs had to be transferred to a neighbouring Sukuma village, Paji, where they are not being used. In addition, the crops introduced to them are considered strange by the hunter-gatherers, who would prefer such crops as cassava, potatoes, etc. which demand less attention, and withstand drought better.

Livestock keeping is slowly gaining acceptance among the hunters. As a coping strategy, some of the hunters have also started keeping chickens but it is only the younger generation that consumes chicken and eggs. All in all, the hunter-gatherers find agriculture a waste of time and often resort to their traditional ways of getting food.

Conservation policies have also constrained the hunters' access to their sources of livelihood. Hunting and gathering of wild berries, which mediated their livelihood, became restrictive hence creating uncertainty and perpetual food insecurity.

Pastoralists: The Barbaig and Maasai Peoples

The Barbaig are part of the Datoga cluster that comprise Buradiga, Bisiyeda, Gisamjanga, Bajuta, Gidang'odiga, Biyeanjida, Darorajega and Barbaig. Whereas the Gisamjanga section of the Datoga have been assimilated by the Iraqwi, the Biyeanjida integrated into the Nyaturu.

The Barbaig are found mainly in Arusha and Singida Regions along the Eastern Great Rift Valley, in the Districts of Babati, Mbulu,

Maasai Women. Ngorongoro, Tanzania. Photo: Frans Welman/WIA

Mongowamono Wahadzabe Settlement, Lake Eyasi, Tanzania. Photo: Frans Welman/WIA

Hanang, Singida, Manyoni and Iramba. Most of the Barbaig are currently concentrated in Hanang District at the foot of Hanang Mountain. They often migrate with their livestock across the borders of Arusha and Singida regions and, in recent years, following alienation of their traditional territory in Hanang, they have also started migrating into Dodoma, Morogoro and Shinyanga.

The Maasai[4] of Tanzania are divided into segments, the main group are the ones regularly referred to as the Maasai who live in four districts of Arusha region: Monduli, Simanjiro, Kiteto and Ngorongoro. The other segment are the Ilparakuyo (sometimes called Kwavi) who live in Tanga and Morogoro and a few have moved to Iringa and Mbeya.

Pastoralists and Resource Alienation

All pastoralists are under pressure from different land uses. The Barbaig have lost their prime lands to wheat production under the major wheat project implemented by the National Food Corporation (NAFCO), which was funded by the Canadian International Development Agency (CIDA). This has created serious land scarcity, subsequently causing perpetual conflict.

Similarly, the Maasai have also lost critical resources to wildlife conservation[5], large and small-scale farming, to mining companies and to infrastructural development. And in the same way, serious conflicts have arisen over these lost resources.

Development in the National Context

Indigenous Peoples live in an environment that is influenced by national and regional developments. The following are some of the highlights of important developments in the country, which have either a direct or an indirect bearing on the livelihoods of Indigenous Peoples.

Structural Adjustment Programmes (SAPS) and their Impact on Indigenous Peoples

Over the last two years, Tanzania has continued to feel the impact of the implementation of Structural Adjustment Programmes (SAPs). The specific objectives of the adjustment programmes that Tanzania signed with the International Monetary Fund (IMF) included arresting the economic decline, correcting imbalances in the external accounts, reducing government budget deficit, increasing the output of food and export crops, attracting investment and external resources and establishing instruments for efficient use of resources.

While virtually all Tanzanians have felt the impact of SAPs, the most affected segments of the population have been indigenous peoples, who are marginalized. Following the privatization of animal health services, prices for livestock drugs have risen beyond the reach of most pastoralists. Lack of infrastructure and marketing facilities have made it difficult for the livestock keepers to access livestock drugs. This combination has resulted in increased livestock diseases and losses.

Economic liberalisation has had its effect on pastoralism. Increased trends in the utilisation of forest products, mining extraction, charcoal burning and expansion of areas under crop production have all had a negative impact on pastoral production. They have all resulted in loss of grazing areas and alienation of permanent water sources. Many hunting blocks and wildlife management areas have increased competition for natural resources that are critical for pastoralism.

The banning of subsistence hunting has also negatively affected hunter-gatherer communities, since their livelihoods are dependent upon hunting game and gathering berries. Although hunters have been given a Presidential License allowing them to hunt without "paying fees", the difficulties in obtaining the licence lead to restrictions in accessing hunting.

The New Land Policy and Land Act of 1999

In 1995, Tanzania formulated a National Land Policy, which reaffirms the colonial legacy that declared all land in Tanzania to be public and vested in the presidency. In February 1999, the National Assembly passed a new land law, the Land Act and Village LandAct, 1999.

Also, because of the economic liberalisation, land is given a market value and priority is given to investors over the local people. Contrary to recommendations made by the Presidential Commission's Inquiry into Land Matters, which was chaired by Professor Issa Shivji, the Ministry of Lands officials are still in charge of land administration.

The new land law emphasises optimal use of land at the expense of security of tenure for subsistence farmers, herders and hunter-gatherers. A combination of factors, such as increased human, livestock and wildlife populations, expansion of agriculture, mushrooming of peri-urban centres, new forms of natural resource uses, have all increased the pressures on natural resources and a new class of landless Indigenous Peoples is emerging in Tanzania.

Displacement of indigenous resource tenure regimes and the imposition of alien models of property rights, with land vested in the presidency and administered by the executive, i.e. Ministry officials, is seen as the root cause of land alienation and insecurity of resource tenure in Tanzania.

Emerging Issues and their Impact on the Livelihoods of Indigenous Peoples

Shrinking territories

The indigenous pastoral and hunter-gatherer communities in Tanzania have traditionally occupied areas well endowed with natural resources. Such territories were adequate in size, and ecological parameters mediated and supported the sources of livelihood that formed the heritage of such communities. Indigenous knowledge systems evolved over time, and natural resources were utilised and managed in sustainable ways.

Over the years, the systematic alienation of key resources began to result in a shrinkage of their resource bases. Reduction of the resource base has reduced livestock holdings for the pastoral Datoga and Maasai. For the hunter-gatherer Ndorobo and Hadzabe, policies and regulations governing hunting have outlawed subsistence hunting. In addition, immigrants have depleted game resources and environmental degradation has significantly reduced the availability of wild berries, roots and honey.

Land alienation:

The alienation of land belonging to Indigenous Peoples in Tanzania for the creation of wildlife protected areas (Tarangire, Manyara, Ngordoto and Serengeti National Parks as well as the creation of Ngorongoro Conservation Area) and the alienation of Barbaig land for large-scale commercial farming, such as the NAFCO wheat farms in Hanang', small-scale farming in Kiteto district and gem stone mining at Mererani in Simanjiro, have all reduced the resource base for indigenous peoples, resulting in increased levels of land use conflicts.

Resource-based conflicts

Conflicts between wildlife and human activities originate in the historical approaches to conservation movements in the region. Official policies and attitudes relating to wildlife management in the region have tended to over-emphasise a law-enforcement approach. This method of conservation was inherited from the colonial era, during which time the rights of people occupying the same territories as wild animals were regarded as secondary to those of the wildlife. Accordingly, Park management training followed the same trend, whereby the development concerns of local people were disregarded in favour of wildlife.

Kilosa Killings

In early December 2000 (the night of 8^{th}), violence broke out between the pastoralist Maasai and crop farmers in Rudewa village, Buyuni ward in Kilosa district. Nearly 31 people, mostly farmers, were killed and about 20 injured.

The nature of the conflict was resource-based, due to incompatible forms of land use between herding and crop agriculture. Reports in the media were clearly biased against the pastoralists, who were portrayed as "loose-foot herders who had no respect for other people's property".

The incident led to the suspension of senior government officials, the Kilosa District Commissioner, Edith Tumbo, and the O.C.D., Honoratha Chuwa. The Prime Minister and Inspector General of Police respectively suspended the two officials pending the setting up of an inquiry. A commission of inquiry was subsequently set up to investigate the cause of the conflict and advise government accordingly.

Multiple Marginalization, Increasing Levels of Vulnerability and Poverty

Levels of vulnerability and poverty are increasing. The ability of Indigenous Peoples to manage ecological uncertainty and spread risks has been reduced significantly. Some of the consequences of the shrinkage of their resource base are a decrease in the mobility of herds and changes in patterns of resource use. This has, in turn, led to livestock losses and increased levels of poverty and food insecurity. There are many levels of marginalization.

Economic marginalization is caused by a combination of factors. The reduction of the resource base significantly reduces livestock numbers. Livestock herders require large and ecologically variable grazing areas that facilitate seasonal mobility for optimal productivity. Mobility is necessary in order to allow range resources to regenerate and for optimal use. Restricting daily and seasonal livestock movements creates a form of economic marginalisation.

Reduction of the resource base also reduces game resources and wild berries, on which hunter-gatherers depend. A lack of infrastructure also makes areas occupied by indigenous people less accessible. The physical infrastructure is either lacking or is inadequate and this has had a negative impact on the coverage and quality of social services. Health facilities and health staff are few and far between, as are educational facilities.

The few available schools are poorly staffed and equipped. Because of poor facilities, pupils from the indigenous communities rarely make it to secondary schools. Serious shortages of teachers, equipment and books limit access to formal education. As a result, levels of illiteracy are increasing and there are inadequate professionals from these communities. This lack of own professionals in the fields of education, human and animal health, the judicial system and administration deprives indigenous peoples of representation on decision-making bodies. Overall, the denial of development constitutes a gross violation of fundamental human rights.

Extraction of natural resources from indigenous areas is largely benefiting outsiders, and nothing is ploughed back into such areas for the development of indigenous peoples and their areas. And this constitutes a denial of the right to their own resources. Since development priorities are defined elsewhere and not where indigenous peoples live, these peoples find themselves increasingly victimised and marginalized because of the abundance of valuable natural resources available in their areas.

In the case of the pastoralists, inadequate marketing facilities constrain livestock sales, resulting in perpetually low prices for livestock and livestock products. This has increasingly reduced the purchasing power of pastoralist Barbaig and Maasai, placing them in very vulnerable situations.

Cultural marginalisation comes about as a result of many factors. the loss of key resources that constituted the basic cultural rights of indigenous peoples has impacted on indigenous peoples' cultures negatively. *Endoinyio oolmoruak* is a special sacred site whose value to the Maasai community has been constrained by the loss of key resources.

There are also ritual occasions that are no longer observed because indigenous peoples are unable to afford the required stock to perform the ritual. It is also because of economic constraints that indigenous peoples have been systematically selling their valued art objects for a pittance, resulting in the removal of indigenous artefacts from the communities to trade centres (curio shops, museums and other tourist centres). Some of this art is used to decorate tourist hotels to which indigenous peoples are denied access.

The promotion of national languages and dominant cultures has been accompanied by the systematic suppression of indigenous languages and cultures, such that in urban settings it is becoming common for indigenous children whose parents work in towns not to speak their own languages.

An important segment of the community is also being drawn to urban centres in search of wage employment and this not only denies indigenous communities much needed labour but also removes the fabric that used to hold indigenous communities together. An example of this is the case of the *Ilmurran* who have been pushed - through loss of livestock - to work as security guards in urban centres because, being non-literate, these are the only available jobs.

In the political arena, all four indigenous communities in Tanzania have experienced the loss of their indigenous territories and they have been pushed into other areas. They now live in more than 15 administrative districts, where they constitute small percentages of the population of these districts. Consequently, they have ended up becoming a minority without adequate political representation in ten districts.

Regional Initiatives, Processes and Future Prospects

In June (5th to 8th) 2000, a total of 98 participants from 48 NGOs, CBOs, service providers and concerned individuals attended a workshop that deliberated on how to develop an umbrella organization that would act as the voice of all pastoralists and hunter gatherers, a body that would coordinate their activities and enhance lobbying and advocacy on issues of primary concern.

The establishment of a forum (TPHGC*) was designed to enable member organizations to share information and experiences; facilitate coordination of initiatives enhancing the development of indigenous communities; forge effective representation of indigenous communities at various levels - local, regional, national and international; promote service delivery to indigenous communities; facilitate processes to mobilize resources for indigenous communities; ensure advocacy and lobbying mechanisms for enhancing security of resource tenure for indigenous communities; build capacity for member organizations and networking.

In order to put this into practise, a task force was set up to carry out the above activities. The composition of the task force reflected the diversity of indigenous communities participating in the meeting. Two task force members were from the Maasai community, one from the Parakuyo community, two from the Barbaig community, one from the Hadzabe community and four were selected on the basis of their professional experience.

Community Research and Development Services (CORDS) was chosen to serve as an interim Secretariat. So far, the task force has prepared a constitution, has drawn up a newsletter to inform stakeholders about progress so far and has been fundraising for the purposes of operationalizing the Council's objectives, one of which is to call the same stakeholders together for an update and to undertake strategic planning for the Council.

Regional Developments

In January 1999, a workshop organised by PINGOS and IWGIA was held in Arusha, Tanzania. The workshop brought together indigenous participants from Eastern, Southern and Central Africa. One of the achievements of the workshop is that it helped indigenous peoples from the region to build their own networks. It also provided an avenue for African indigenous peoples organizations to link up with the African Commission for Human and People's Rights.

Later the same year, the Saami Council organized a course on Human rights and UN processes in which a number of indigenous peoples and organizations participated. The course lasted for three weeks and resulted in increased knowledge of the UN processes. It was during that time that the Organization of Indigenous Peoples of Africa (OIPA) was formed.

In June 2000, the UN High Commission for Human Rights organized a workshop, again in Arusha, to bring together indigenous peoples and minorities to discuss multiculturalism.

Notes

[1] Discussion about other groups in Tanzania that may claim the identity of being indigenous peoples is beyond the scope of this paper.

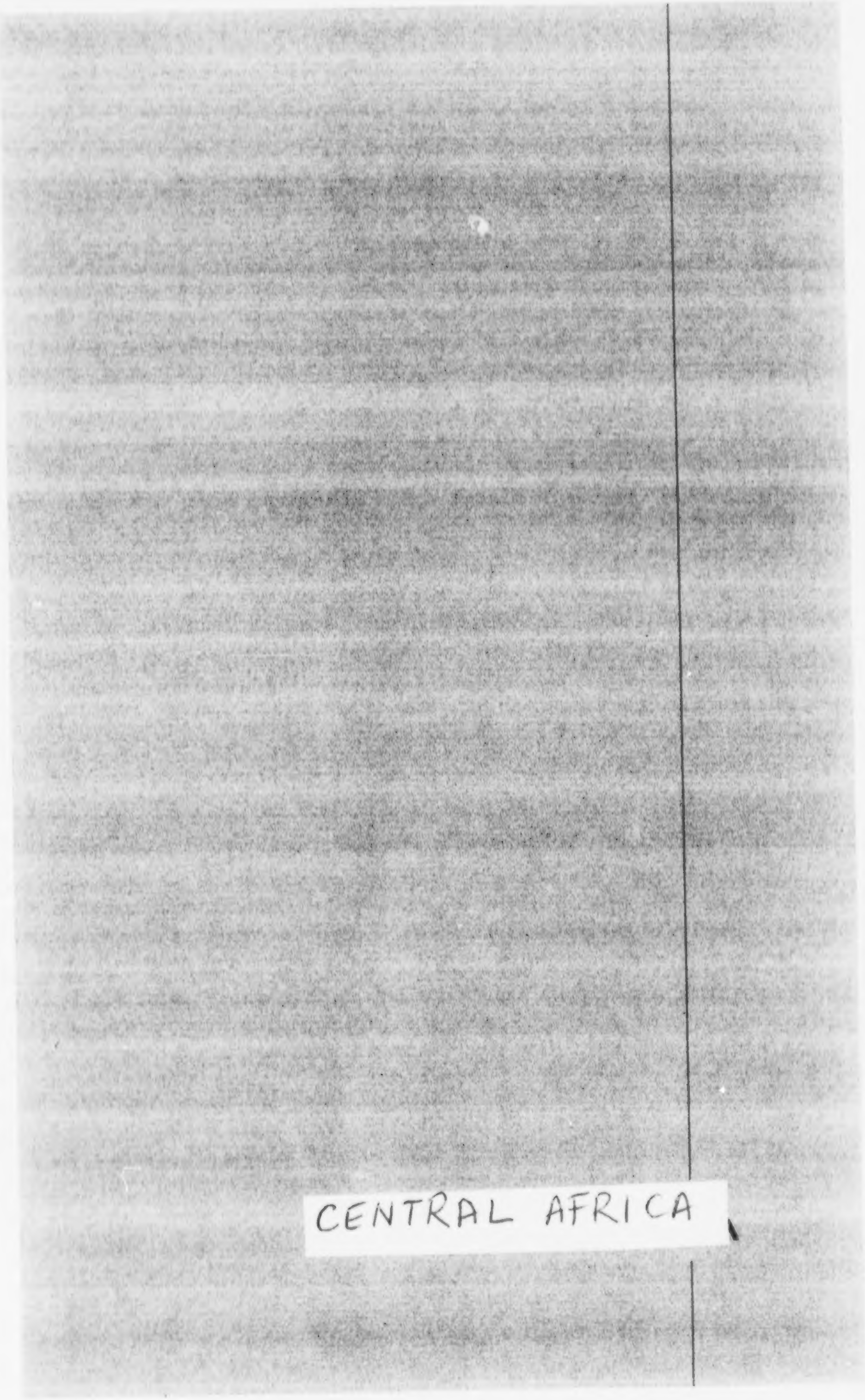
[2] Tindiga is used by the Nyisanzu to refer to people who live in the bush and live on hunting and gathering.

[3] Ndorobo is a Maasai word that means someone without livestock and hence dependent on hunting and gathering

[4] Although the Maasai are found in both Kenya and Tanzania, this section deals only with the Tanzanian side of the border.

[5] Some of the protected areas carved out of Maasailand include Serengeti (Siringet), Manyara, Tarangire, and Nkordoto National Parks. Although Ngorongoro is supposed to be shared between people and wildlife, people have clearly lost out at the expense of conservation.

* TPHGC: Tanzania Pastoralist and Hunter-Gatherers Council


CENTRAL AFRICA

BEST COPY AVAILABLE

CENTRAL AFRICA

RWANDA

As a result of sustained advocacy efforts over the past years by the national Rwandese Twa NGO "CAURWA" (*Communauté des Autochtones Rwandais*), the dire situation of the Twa, and the fact that they have been hitherto almost invisible to policy makers, is at last beginning to be recognised by the Rwandese authorities. In April 2000, the newly established National Unity and Reconciliation Commission acknowledged: "The marginalisation of the Twa people is a dark side of our society...they have been systematically forgotten as if they do not exist... they have genuine concerns." The Commission recommended affirmative action for the Twa in terms of free education and health services. Four Twa community representatives subsequently participated in the Commission's National Conference in October, and spoke powerfully to the assembled participants of their sense of injustice and exclusion from Rwandese society. The Conference recommended in Resolution 11 that special attention should be paid to women, children, youth and Twa people and efforts should be made to help their organs acquire the capacity to participate in decision-making structures. Two youth and two women's representatives have been co-opted to Parliament but, so far, there is no similar representation for Twa.

In July, CAURWA sent an open letter to President Paul Kagame, urging the government to involve them more in the country's development efforts. The letter received national and international coverage and highlighted the fact that, in the five years since the Government of National Unity came to power, the situation of the Twa has not improved. Alienated from their traditional lands without compensation, they continue to suffer poverty, lack of education, lack of basic healthcare, social isolation and exclusion from decision-making.

A meeting of Central African indigenous organisations was held in Kigali in November, to strengthen the regional development of the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests. This stimulated discussion within Rwandese ministries, NGOs and the press about "indigenousness" in Africa, a concept that is widely resisted by African governments and is particularly sensitive in Rwanda, given the post-genocide government's policy to discourage identification in terms of ethnic groups. The meeting elected national focal points for the International Alliance in each country in order to strengthen communications between indigenous groups within the region.

CAURWA and its member organisations have been active at local level, including dialoguing with local authorities to release communal land for the use of Twa families, organising house-building projects, providing tools, materials and aid to Twa communities, supporting Twa secondary school pupils, and setting up a network of prefectoral focal points to liaise between the communities and CAURWA. National coordination between Twa NGOs is increasing as five NGOs are now collaborating under CAURWA's auspices to carry out community projects. A comprehensive survey of Twa prisoners in all the detention centres in Rwanda carried out by the *Association pour le Développement Global des Batwa de Rwanda* (ADBR) revealed that the majority of the 700 Twa prisoners lacked dossiers, clothing, food and contact with their families. Without financial means or influence, they are unable to advance their cases. Only a handful of Twa have so far been tried. ADBR proposes working with local lawyers to bring the cases of those Twa with dossiers to court. An estimated 3000 Twa were imprisoned after the genocide, raising the question of what has happened to the remaining 2300 individuals.

THE DEMOCRATIC REPUBLIC OF CONGO (DRC)

The Twa in eastern Democratic Republic of Congo continued to be affected by the ongoing conflict between Uganda and Rwanda-backed rebel movements, ex-Rwandese Army (FAR) and Rwandese Interahamwe militias (perpetrators of the Rwandese genocide), Congolese Mai-Mai militias and DRC government forces. Severe human rights violations have been perpetrated by all the factions involved. It remains to be seen whether, following the assassination of President Laurent Kabila on January 17th 2001 and accession of his son Joseph Kabila to power, the Lusaka peace agreement negotiated in August 1999 between all the belligerent parties can be implemented.

Detailed information about the impact of the conflict on the Twa, Mbuti and other indigenous peoples of eastern Congo is not readily available. Intense conflicts between Hema and Lendu tribes in the Ituri region of north-eastern DRC, exacerbated by power struggles within the Ugandan-backed rebel forces, have caused thousands of civilian deaths and hundreds of thousands of displaced people. The effects of this fighting on the Mbuti is not known. In October 2000, UNHCR reported that, for the first time, over 100 Pygmies had sought refuge in Betou in the Republic of Congo, fleeing fighting between the Mouvement de liberation du Congo and government forces in north-western DRC. UNCHR considered that the Pygmies' presence was worrying, 'as these small communities are usually very self-sufficient and reluctant to move from their home areas unless faced with extreme hardship.' Attacks by Interahamwe militia, Mai-Mai and other armed groups around the Kahuzi-Biega National Park in south Kivu caused increased terror for the local population, including Twa communities, who have suffered arbitrary arrests, rape and pillage of property and animals. Each of the warring factions regards the Twa as being allies of the other side, and they thus fall victim to each successive wave of militias passing through the forest. Many Twa have left the forest for villages closer to Bukavu, putting a strain on the limited resources of already poor Twa communities. Completely destitute displaced Twa have reached Bukavu, Goma and other urban centres in search of food, shelter and basic necessities. Aid agencies cannot reach Twa communities still in the forest but the Twa say that even in accessible areas they frequently do not get a share of humanitarian aid because the distribution is manipulated and diverted by other more powerful groups.

Despite the ongoing difficulties, NGOs working for the Twa are continuing their work with Twa communities around Bukavu and developing their agriculture, education and health activities with Pygmy communities further afield. A number of new NGOs have emerged in the DRC, aimed at supporting Pygmy communities in education, agriculture and health care. This indicates a growing interest in Pygmy issues, albeit donor-driven in some cases. Most of these NGOs include some Twa individuals within their staff or associates. The *Programme pour l'Intégration et le Développement des Pygmées du Kivu* (PIDP) has begun a programme to respond to the needs of Twa women, and has made contacts with agencies working with Pygmies in North Kivu. PIDP is supporting a Twa student studying rural development in Bukavu. Legal action is being taken to contest the expropriation of a field cultivated by Twa at Bishulishuli. The Twa's lack of secure land for agriculture and housing is the main problem hampering efforts to improve their situation. A quarterly information bulletin *"L'Echo des Pygmées"* reporting on local and regional events has been started by the Bukavu-based

NGO CAMV (*Centre d'Accompagnement des Menages vulnérables et Autochtones minoritaires*).

Twa communities around the Kahuzi-Biega National Park continue to express their dissatisfaction with the restrictions imposed by the park, and their landless situation. The park authorities, the Congolese Institute for Nature Conservation and *Deutche Gesellschaft für Technishe Zuzammenarbeit GmbH* (GTZ), obtained food aid from humanitarian agencies for the Twa park guards. A plan to assist the Twa more effectively is apparently being developed by the park managers.

To celebrate the International Day of Indigenous Peoples, PIDP organised a conference of Twa women representing local communities from North and South Kivu and Maniema in August. A second conference was held in Bukavu in November 2000 to discuss Twa women's rights, the effects of the war on them and their contribution to the restoration of peace in the region. It brought together indigenous women from Rwanda, Burundi, the DRC and Kenya, as well as Twa community representatives, local DRC authorities and NGOs. The conference is likely to result in the establishment of a regional Twa women's network.

BURUNDI

Burundi's latest round of violence began in October 1993, following the assassination of the democratically elected Hutu president, Melchior Ndadaye, by the Tutsi-dominated military. Since then, violent conflict between different Hutu and Tutsi elite factions struggling for political power has ravaged the country. The Arusha peace process facilitated first by the late Tanzanian President, Julius Nyerere, and then by former South African president, Nelson Mandela, brought more groups to the negotiating table during 2000, and increased prospects for a political agreement. An accord was signed on 28th August 2000 by all parties except the two main armed pro-Hutu rebel factions CNDD-FDD and PALIPEHUTU-FNL, with the result that no cease-fire agreement was negotiated and fighting between opposing factions still continues. The possibility remains that the Arusha accord will be violently rejected.

The 30,000-40,000 Twa people of Burundi were not represented in the Arusha negotiations. The Accord provides for a National Assembly with 100 deputies and a Senate with one Hutu and one Tutsi representative for each of the 17 provinces. However, Twa representation is limited to three Twa co-opted to the Senate.

As a result of the civil war, an estimated 370,000 Burundians have fled to neighbouring countries, mainly Tanzania, and some 300,000 are internally displaced or re-grouped in sub-standard camps. The remaining 5.7 million Burundian citizens continue to suffer from violence and the erosion of State infrastructure, resulting in widespread failure of basic social services including health care, education, drinking water and sanitation. Two consecutive droughts and the displacement of farmers from their lands have caused serious food insecurity and environmental concerns. As occurred during the conflict in Rwanda, the Twa of Burundi were victimised by both Hutu and Tutsi belligerents and, being the most impoverished sector of society, have least resources to enable them to survive the harsh consequences of the conflict. They feel this as a particular injustice, since the war is not of their making.

In October, a meeting was held to coordinate the activities of the two Twa NGOs UNIPROBA (*Unissons pour la Promotion des Batwa*) and UCEDD (*Union Chrétienne pour l'Education et le Développement des Déshérités*), and an NGO working with Twa people, APDH (*Association pour la Paix et les Droits de l'Homme*). The three NGOs agreed to prioritise different areas of the country and to work on issues of education, land acquisition, agriculture, income generation, housing, prisoners and promotion of Twa culture. UNIPROBA has distributed materials to Twa farmers and is supporting Twa fisherfolk on Lake Tanganyika. Through their President, Mme Libérate Nicayenze, an MP, UNIPROBA is working to get land allocated to Twa communities. UCEDD is carrying out education and literacy work with Twa communities at Gitega and, in 2000, organised a meeting of Twa women to analyse their problems and identify strategies to empower them.

UGANDA

The establishment of the Bwindi and Mgahinga Forests as national parks in 1991 resulted in the enforced exclusion of the two thousand or so Twa of south west Uganda and the total destruction of their forest-based role in the local economy. They became landless labourers for local farmers. Some Twa received compensation, most received nothing. Meanwhile farmers, who had been destroying the forest and were therefore recognised as having land rights, received most of the available compensation. Much funding for the parks comes from the World Bank through the Global Environment Facility. Belated efforts by those responsible for the parks to help evicted Twa have been resisted by local farmers who, not recognising the Twa's unique dependence on their forest resource base, see land allocation and other support to Twa as favouritism. The Twa lack alternative livelihoods - access to the forest for subsistence and religious reasons is now illegal and risky for them and only two Twa are employed by the parks. Community development projects, funded by a Trust fund established by the World Bank and supported by the Dutch Government, have been very slow to deliver benefits to the Twa, despite pressure from the Dutch.

Over the last year, however, the situation of the two thousand or so Twa in south west Uganda has to a certain extent improved, although they continue to experience discrimination and impoverishment, and to be forcibly excluded from their forests. The Twa established their own NGO in February 2000 (OUBDU – United Organisation for Batwa Development in Uganda), and have begun to receive land as part compensation for their exclusion from the forests.

In December 1999, partly due to pressure from the Dutch, 70 acres of land was bought and distributed to 38 Twa households (less than 10% of landless households). In May 2000, UOBDU's representatives participated in a workshop on the World Bank's Indigenous Peoples Policy (see below under Advocacy at the World Bank). Later in 2000, partly due to pressure from the Twa themselves who had gained confidence and knowledge as a result of contacts made during the World Bank workshop, there were further purchases of about 100 acres of land. Potentially 25% of Twa will have received a small but vital amount of agricultural land giving them some sort of subsistence base, but 75% are still destitute and, in practice, almost all of them have still not been given any rights to enter their forests for subsistence or religious reasons.

Whether these actions are too little too late and will soon slow down, or whether the process of distributing land manages to gather momentum, it is too early to say. The process may begin to meet Twa needs if it is matched by genuine participative efforts from the conservation organisations and Twa can gain real benefits from the forests. This depends on Twa access to the forests for sustainable use and cultural purposes: a promise made since their eviction and exclusion in 1991 but which has not yet materialised. Instead, Twa are either too frightened to enter the forests (and the young are losing any chance of developing forest knowledge) or, for those that do enter their forests to worship or for subsistence purposes, a three-month prison sentence is often the consequence. Thus it is a matter of urgent concern that the relevant conservation bodies have not been able to move ahead speedily on questions of Twa access or rights to their forests. If dialogue with conservation bodies does not resolve the issue of forest access, compensation and restitution, the Twa are currently considering a possible legal challenge to the 1991 eviction and their subsequent exclusion from the Mgahinga, Bwindi and Echuya forests.

CAMEROON

Bagyéli indigenous communities in south-west Cameroon will soon be faced with the environmental and social consequences of an oil pipeline passing through their territories carrying oil from the Doba fields in Chad. The controversial Chad-Cameroon oil pipeline project costing US$3.5 billion was approved on June 6th 2000 by the World Bank, which is supporting the project with loans of US$240 million[1].

A survey of Bagyéli villages carried out in April 2000 by the Bagyéli organisation CODEBABIK (see below under Advocacy at the World Bank) highlighted the marginalised and vulnerable situation of this indigenous group. The 4000 or so Bagyéli (Bakola) people lack Cameroonian identity papers, never participate in local elections and have no land rights under either national law or Bantu customary law. They mainly live by hunting and gathering, some farming and as occasional labourers in Bantu villages. They have not been well informed about the implications of the oil pipeline project for their future. The project presents real risks of increased impoverishment and marginalisation of the Bagyéli people.

Lobbying efforts at the World Bank by the Bagyéli and their supporters to highlight the concerns of indigenous peoples affected by the pipeline means that the project is now the subject of international public attention. The Bank Board views the project as a case that will test the World Bank Group's ability to deliver poverty reduction and safeguard the rights of indigenous peoples. Various measures such as an Independent Advisory Group (IAG) including social and development experts to report regularly to the Board on the progress of implementing this project, and an Indigenous Peoples

Three cases from Central Africa conc. World Bank projects affecting Indigenous peoples (see p.270)

Author	World Bank-funded project	Main Conclusions
CAURWA, Rwanda	Industrial forestry and cattle-rearing projects in Rwanda's Gishwati forest in the 1980s	The projects caused the involuntary resettlement of the Impunyu Twa of the Gishwati forest, and the loss of their previous forest-based livelihoods and culture, leaving the Impunyu landless and impoverished.
CODEBABIK and Planet Survey, Cameroon	Pre-project implementation consultations with the Bagyéli on the Chad-Cameroon Oil Pipeline Project	The consultations failed to properly inform the Bagyéli of the implications of the project for their future, mechanisms for the effective participation of the Bagyéli in decision-making were lacking and State agencies actively supporting indigenous interests do not exist. OD 4.20 was not implemented correctly.
UOBDU, Uganda and FPP, UK	Impacts of the Mgahinga and Bwindi Impenetrable Forest Trust on the Batwa of SW Uganda	The Trust's implementation of provisions for the Twa, particularly the appointment of a Twa officer, compensatory land purchase and community development projects has been sluggish and half-hearted.

Plan, are proposed but it remains to be seen whether the project will address the fundamental problems of discrimination and powerlessness facing the Bagyéli and bring them sustainable livelihoods, rights and equality.

Regional events

Conference on Moist Tropical Ecosystems of Central Africa (CEFDHAC)

Twa representatives from Rwanda, Burundi and the DRC, and a Bagyeli representative from Cameroon attended the 3rd Conference on Moist Tropical Ecosystems of Central Africa (CEFDHAC) in Bujumbura, Burundi in June. CEFDHAC is an interministerial process aimed at coordinating actions on forests across the central African countries. The objective of the conference was to examine issues of good governance in the forest areas of the Congo Basin. Despite the fact that the area covered by the countries in CEFDHAC is the area inhabited by Africa's indigenous "Pygmy" peoples, the CEFDHAC process makes little effort to engage indigenous or forest-dependent communities. Recommendations by the indigenous participants for greater involvement of indigenous peoples in environmental management, though approved by delegates to the Conference, did not make it to the final communiqué.

Advocacy at the World Bank

Central African indigenous peoples contributed inputs to an evaluation and revision of the World Bank's Operational Directive 4.20 for Bank projects affecting indigenous peoples, at a workshop in Washington, in May 2000[2]. The workshop comprised eight case studies, including three from central Africa(see p.269).

The workshop enabled indigenous representatives to make useful contacts with Bank staff and with indigenous people from other regions of the world. The case studies highlighted the need for stronger participation of indigenous peoples in Bank-funded projects, early action to safeguard indigenous lands and resource use, better monitoring of projects including inputs from affected indigenous peoples and NGOs, and measures to ensure correct implementation of World Bank projects, including stronger enforcement measures with borrower governments. The Bank's draft revised indigenous peoples' policy (OP 4.10) is expected to be published in February 2001.

New Publications

Video: *People of Clay: The Twa of Rwanda.* The history and present situation of the Twa of Rwanda, in the context of the international debate on indigenous peoples in Africa. Produced by CAURWA and Forest Peoples Programme.

Albert Kwokwo Barume. *Heading Towards Extinction? Indigenous Rights in Africa: The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo.* IWGIA and Forest Peoples Programme, 2001.

Jerome Lewis. *The Batwa Pygmies of the Great Lakes Region.* Minority Rights Group, UK, 2000.

J. van den Berg & K. Biesbrouck. *The Social Dimension of Rainforest Management in Cameroon: issues for co-management.* Tropenbos-Cameroon Series 4, 2000.

Notes

1 For further details see "What is in the Pipeline for the Bagyéli of Cameroon?" by the Forest Peoples Programme, UK (*Indigenous Affairs* No 3, July-Sept 2000).

2 The report of the workshop *"Indigenous Peoples, Forests and the World Bank: Policies and Practice"*, (organised by the Forest Peoples Programme and the Bank Information Centre) is available from FPP.

SOUTHERN AFRICA

BEST COPY AVAILABLE

SOUTHERN AFRICA

NAMIBIA

Drastic and Slow Measures

Certain decisions and plans of the Namibian Government in 2000 and 2001 have already had, or will have, critical consequences for certain San groups in the country.

The decision to allow the Angolan Armed Forces (FAA) to fight Unita rebels from Namibian soil has had extremely destructive consequences for the San in the Kavango and Caprivi Regions. Since this decision was taken in 1999, the San in these regions have lived in fear of stepping on landmines, being attacked by Angolan soldiers and being harassed by members of Namibia's Special Field Force. Arbitrary arrests of Khwe men have been frequent occurrences. In 2000, as happened for the first time in late 1998 following a secessionist uprising in the Caprivi, hundreds of Khwe fled to refuge in neighbouring Botswana, where the majority joined the 1,600 San at the Dukwe refugee camp where they took shelter in early 1999. Five of the eight well-established villages in West Caprivi are now deserted. Tourism in northern Namibia has declined dramatically due to the unrest in the area, and this decline has drastically affected the Khwe's community-owned N//goabaca campsite in West Caprivi: no tourists visited the camp in 2000, thus it generated no income. Some schools in West Caprivi have remained closed since late 1999, and many of the learners affected have no prospects for attending school elsewhere. Fearing for their safety, most Khwe women and children no longer gather food in the bush. Since the danger of landmines became a feature of daily life, Khwe farmers have cultivated only tiny pieces of their fields, if any. In early 2001, the Working Group of Indigenous Minorities in Southern Africa (WIMSA) received reports that the vast majority of the 6,000 Khwe of West Caprivi will not be able to harvest crops in the forthcoming season, thus if no solution is found they will go hungry until the next rainy season 10 months hence. Eventually, after many requests, the Namibian Ombudswoman has promised to visit the area in February 2001 to assess the situation.

The Namibian Government's plan to relocate the Osire refugee camp to the tiny settlement of M'Katta in Tsumkwe District West (formerly West Bushmanland) is regarded as counterproductive to the San's aim of obtaining a conservancy that will grant them control over natural resources in that area. The imminent placement of nearly 20,000 refugees on land that currently sustains approximately 4,500 !Kung will result in environmental devastation and a range of associated problems. The international organisation, Survival International, took action to prevent this from happening by launching a campaign in early 2001 to raise international awareness on the issue. The response to date has been a barrage of letters – *hundreds* in fact – addressed to the Namibian Ministry of Home Affairs. A 10-member task force formed recently to tackle this issue is comprised primarily of San representing the !Kung and Ju/'hoan Traditional Authorities of Tsumkwe District West and East respectively, as well as the Nyae Nyae Conservancy and WIMSA.

In 2000, Namibia's National Assembly finally approved the long-awaited Communal Land Reform Bill but the National Council (the second House of Parliament) rejected it. Namibian NGOs have also criticised the bill on the grounds that it lacks both an integrated natural resource management plan and clarification on the status of communal land that has already been fenced off – this being a widespread and illegal practice in Namibia. The Communal Land Reform Bill is of interest to the San traditional authorities particularly, as it provides for their involvement in land allocation procedures, and also recognises customary or traditional rights regarding access to land and natural resources. Each of the six broader San communities in Namibia has its own traditional authority and though all have applied for official recognition, to date the Government has recognised only two. The remaining four authorities will not be recognised until outstanding disputes within their respective communities, and between these and the Government, have been resolved.

Education

As in previous years, the Ministry of Basic Education, Sport and Culture (MBESC), UNICEF and NGOs have continued laying the foundation for the implementation of education programmes for San.

In September 2000, the draft strategy for the "Government of Namibia and UNICEF Programme of Co-operation, 2002-2005" was approved and endorsed. San representatives were invited to participate in the thematic working groups that prepared the draft strategy, and to sit on the steering committee that approved it. This invitation was a milestone for San: it was the first offer of direct representation on bodies tasked to strategise for such a programme. The strategy paper refers to vulnerability and marginalisation, and particularly to educationally marginalised children, the majority of whom hail from San or Ovahimba communities. It also imparts lessons on special protection from marginalisation, one such protection being that "financing for affirmative actions [should] include children of marginalised groups in education, health care and other services".

The document entitled "National Policy Options for Educationally Marginalised Children", published by the MBESC in 2000 concludes that, "San children are the most educationally marginalised in the country" and further that, "The challenge for the MBESC, and for the country at large, is to facilitate the education and training of San children and at the same time allow them to keep and be proud of their origin and culture." The document pleads for applying flexibility and creativity with a view to developing appropriate measures to ensure the participation of San children in the formal education system.

Training, early childhood education and formal and traditional education have continued to play a vital role in San communities during the period under review. However, Namibian schools are still registering a high dropout rate among San learners, and a high number of those who completed Grade 10 (the compulsory minimum level that a Namibian learner should attain) did not pass the end-of-year examinations. The few San who passed the Grade 12 examinations with results high enough to earn them admission to southern African universities must compete with thousands of other applicants for a place. By way of example, eight San applicants (one of them a woman) who applied to study at the Windhoek College of Education in 2001 competed with 1,800 other applicants for the 500 available places. Three of the eight (including the woman) were invited to take further tests and attend interviews, and eventually all three were enrolled for a Basic Education Teacher Diploma.

To increase school attendance and considerably decrease dropout rates among San learners in the Omaheke Region (in east-central Namibia), UNICEF has provided financial support and expertise to the Omaheke San Trust (OST), a small umbrella organisation serving the approximately 6,000 San in the region. The OST is currently identifying the problems faced by San learners in individual schools, developing a database on schools and San learners in the region, following up on learners who have dropped out, and facilitating dialogue between San communities and schools. The OST Board of Trustees welcomes this initiative, and some of its members are engaged in the programme.

The regional San education programme being run under the auspices of WIMSA with assistance from other stakeholders has entered its second phase after a one-year period of research into the educational situation of San children in southern Africa came to completion with the publishing of a report titled Torn Apart: San Children as Change Agents in a Process of Acculturation, authored by development worker Willemien le Roux. The second phase involves returning to all stakeholders in southern Africa to identify the efforts already in progress that seek to address the report's recommendations, the gaps that still need to be filled and the people best placed to fill them, and to open communication channels among the stakeholders. A workshop on education was held in November 2000 to address the specific problems experienced by San in Botswana. The workshop was well attended and one outcome was the appointment of a lobbying group on Education for Remote Area Dwellers (San) in Botswana, comprised of representatives from the Botswana Ministry of Education, San organisations and local councils. A regional San education conference hosted by the MBESC's Intersectoral Task Force Committee on Educationally Marginalised Children in Windhoek in May 2001 will mark the end of the second phase of the regional San education programme.

During the last WIMSA general assembly held in Gaborone, Botswana, in October 2000, the 47 San delegates from Botswana, Namibia and South Africa decided to form a nine-member Regional Education and San Language Committee and a six-member Regional San Heritage and Culture Committee. The latter will be an advisory body to the San Cultural and Training Centre situated near Yzerfontein in the Cape, South Africa, and for the San Oral Testimony Collection Project operating under WIMSA and the Panos Institute, an international information-dissemination organisation based in London.

San Women

A report entitled "A Gender Perspective on the Status of the San in Southern Africa" was completed in November 2000 and is due to be published as part of a series of five reports conveying the findings of a regional study entitled *A Regional Assessment of the Status of the San in Southern Africa,* funded by the European Union and co-ordinated by the Legal Assistance Centre (LAC) in Windhoek. (One report is a general introduction to the study and the other three are country specific. All five are likely to be ready for distribution in April 2001.) Authored by Silke Felton and Heike Becker of the Centre for Applied Social Sciences (CASS) at the University of Namibia, the gender report "firstly investigates the gendered aspects of the marginalisation of the San of Southern Africa, i.e. how it affects San men and women differently ... [and] secondly [focuses] on the changing gender relations within southern African San communities". The report discusses gender-related matters under themes such as division of labour, education, health, violence and abuse, policy frameworks and leadership, and makes recommendations in respect of each theme.

Capacity Building

For many San representatives, participation in the WIMSA General Assembly was one of the highlights of 2000. It became clearly apparent at the last assembly that the San delegates had developed a sense of unity, ownership of and responsibility for WIMSA. On that occasion, detailed and highly informative reports on each community were presented, critical questions were posed and practical solutions were found to some of the problems discussed. The discussion on indigenous intellectual property rights evoked particularly intense interest. The election of a new WIMSA Board of Trustees saw a shift from the middle-aged and elderly men and women to the younger and formally-educated generation. The members of the new and old boards pledged to co-operate closely with each other.

In the absence of San representation in practically all local and national government structures – only one San having been elected to date to the 72-member National Assembly, the highest legislative organ of government – San traditional leaders who have been formally recognised and are therefore members of the Council of Traditional Leaders are believed to be the most significant San representatives in Namibia at present. WIMSA, CASS and the USA-based First Nations Development Institute have continued to enhance the capacity of the recognised and designated San traditional authorities through tailor-made training workshops. During 2000, a series of workshops was conducted in the communities to provide an opportunity for interested community members to reflect on the tasks, responsibilities and rights of the traditional authorities. Where requested, communities were supported through the process of establishing community organisations.

The above-mentioned OST is already bearing fruit. This community organisation and its San trustees have gained recognition at government level within the region, national and international NGOs have expressed interest in working with it and funds provided by several donors have made possible the establishment of a few community projects. Gaining full recognition and respect among all ethnic groups residing in the Omaheke Region remains the OST's primary challenge.

Conclusions

It is hoped that the San – with the assistance of the international public and the United Nations Working Group on Indigenous Populations – will be able to influence the Namibian Government to revoke its plan to relocate almost 20,000 refugees to the home of 4,500 San who need their natural resources to realise their plans for the envisaged N=a Jaqna Conservancy. It is also hoped that the devastating consequences of the extension of the Angolan war onto Namibian soil will lead the Namibian Government to reconsider its "invitation" to the Angolan Armed Forces (FAA). If San were to be allowed to focus on their aspirations, plans and projects without interference from more powerful and dominating State structures and groups, they could gradually achieve their goals at local, national and regional levels.

BOTSWANA

A major concern of the approximately 53,500 San in Botswana during 2000 was whether or not San communities would be able to maintain their land and resource rights given changes that have occurred in Botswana government policies and the kinds of conservation and development initiatives that are being implemented there. According to San spokespersons and advocacy groups, such as First People of the Kalahari (FPK), Kuru Development Trust (KDT), and the Working Group of Indigenous Minorities in Southern Africa, there were four major areas of concern in 2000: (1) subsistence hunting rights, (2) land rights, (3) rights to benefits from tourism and from wildlife-related conservation and development projects, and (4) cultural and language rights.

Subsistence Hunting Rights

Subsistence rights are those rights related to the fulfillment of basic human needs (e.g. water, food, shelter and access to health assistance and medicines). The denial of the right to hunt and gather, according to some people, is an example of restrictions placed on subsistence rights. The San of Botswana understand full well the need for conservation of wildlife, plants and other resources. At the same time, they feel that they should be able to exploit resources as long as they do so in a sustainable manner.

From 1979 to 2000, Botswana was the only country in Africa that allowed its citizens who carried out subsistence hunting - hunting for the purposes of obtaining meat and other wildlife products for household consumption - to engage in legal hunting, which was made possible through the provision of Special Game Licenses under Botswana wildlife conservation legislation. In the rest of Africa, those people defined as subsistence foragers generally risked arrest and imprisonment if they engaged in subsistence hunting. In March 2000, the government of Botswana issued new 'National Parks and Game Reserves Regulations' (27 March 2000, *Botswana Government Gazette*). In Section 45.1 of these regulations, the following point was made:

> *Persons resident in the Central Kalahari Game Reserve at the time of the establishment of the reserve or persons who can rightly lay claim to hunting rights in the Central Kalahari Game Reserve, may be permitted in writing by The Director (of Wildlife) to hunt specified animal species and collect veldt products in the game reserve, subject to any terms and conditions and in such areas as the Director may determine (Republic of Botswana 2000).*

What this means, in effect, is that Special Game Licenses would no longer be issued to people. Instead, people in the Central Kalahari Game Reserve will have to apply to the Department of Wildlife and National Parks in the Ministry of Commerce and Industry in order to obtain hunting rights in the form of a Director's License. As of 2000, therefore, Special Game Licenses were no longer being provided to subsistence hunters in Botswana.

In the meantime, people continue to be arrested, jailed, fined, and deprived of their assets (e.g. horses, donkeys, weapons, bridles, saddles). Such an event occurred in July 1999, when 13 men from New! Xade, one of the resettlement locations, were arrested for allegedly engaging in illegal hunting. In this case, 7 of the men were arrested inside the CKGR, in contravention - allegedly - of section 2(3) of the 'Wildlife Conservation and National Parks Act, 1992'

A contemporary San settlement, Botswana. Photo: Arthur Krasilnikoff

Young San woman dressed for dance, Botswana. Photo: Arthur Krasilnikoff

(Republic of Botswana 1992). In addition, 6 men were charged with having killed a gemsbok in GH 10, one of the controlled hunting areas (CHAs) in Ghanzi District, sometimes called the Okwa Wildlife Management Area, and were charged with having contravened 19(3) of the 'Wildlife Conservation and National Parks Act'. The men who were arrested had Special Game Licenses, so the charge of hunting without a license was thrown out of court in October 2000.

Security Rights

A major concern of San and other rural people in Botswana relates to security rights. *Security rights* include the rights to be free from torture, execution and imprisonment, or rights relating to the integrity of the person. This set of rights is especially important in light of the frequency of allegations of torture and mistreatment of suspected "poachers" by game scouts and other government officials in Botswana. Such an incident allegedly occurred in late August 2000 in the Molapo area of the Central Kalahari Game Reserve (CKGR). The claims relating to this case are still uncertain, and investigations into the matter are ongoing. But some general information has been obtained.

According to field reports on the incident, 20 men and 4 women from Molapo in the CKGR were allegedly detained by the Botswana Police from Rakops and game scouts from the Department of Wildlife and National Parks for supposedly being involved in a poaching operation. Some of the people detained were taken into the bush away from Molapo and allegedly tortured for a period of 6 days. Subsequent to that incident, a prominent member of the Molapo community, Mathambo Sesana, died of a heart attack which, according to some reports, was a result of the treatment that he had received at the hands of the police and game scouts.

There were other incidents in 2000 in which individuals were arrested and detained for allegedly hunting without a license. In some cases, the charges were dismissed. In other cases, the individuals were kept in jail for inordinately long periods without being allowed to hear the charges against them or have access to legal representation.

The Central Kalahari Game Reserve and Land and Resource Rights

Botswana has devoted a substantial proportion of its total land area to conservation purposes, including parks, game reserves and national monuments, all of which fall under the category of State land (17% of the country) and Wildlife Management Areas (WMAs), which are blocks of land in the so-called tribal land areas or communal lands of the country (71% of the country, about half of which is now zoned as Wildlife Management Areas).

One of the few game reserves in Africa that until recently allowed residents to continue to reside and earn a livelihood was the Central Kalahari Game Reserve (CKGR) in Botswana. As reported in *The Indigenous World 1997-98* (pp. 300-303) in May 1997, the government of Botswana relocated a sizable proportion of the CKGR's population, over 1,100 people, to two sites outside of the reserve, one in the Ghanzi District to the west of the reserve (New !Xade), and the other in the northern Kweneng District south of the reserve, Kaudwane, not far from Khutse Game Reserve. The populations of the new communities are so large, and the resources in the vicinity of the settlements so few, that the residents have been unable to sustain themselves through foraging, small-scale agro-pastoralism and rural industries, and have thus had to depend heavily on the government of Botswana's relief programs for economic support.

A Negotiating Team regarding the CKGR has been meeting with government officials for a number of years and it met with officials from the Department of Wildlife and National Parks several times during 2000. The Negotiating Team consists of representatives from First People of the Kalahari, Ditshwanelo (the Botswana Center for Human Rights), the Botswana Christian Council and WIMSA, along with a legal advisor, Glyn Williams, of Chennells Albertyn, a legal firm based in Cape Town. The Negotiating Team has pushed for recognition by the government of Botswana of the rights of the G/wi, G//ana, Bakgalagadi and other groups in the CKGR, including (1) residential rights, (2) hunting rights, (3) gathering rights, and (4) rights to a share in the economic returns from tourism in the reserve.

The Negotiating Team wants to ensure that the people who have rights in the reserve get some of the benefits from the tourism and other conservation and development-related activities in the CKGR. The Team has called for the inclusion of the needs of CKGR residents in the *Central Kalahari Game Reserve Management Plan,* which is currently in the process of being revised and updated by the government of Botswana. It is hoped that the new management plan will include "communal use zones" where people from local communities in the CKGR will be able to continue to obtain the resources necessary for subsistence and income generation.

The San in various parts of Botswana, with assistance from personnel employed by non-governmental organizations, notably First People of the Kalahari and Kuru Development Trust, were engaged during 2000 in the mapping of San territories (ancestral lands) and land use patterns as part of a strategy to gain government and district council recognition of San land and resource access rights. This process has been done using Geographic Positioning System (GPS) instruments and applying Geographic Information Systems (GIS) techniques. Such mapping work was carried out in the Dobe and !Goshe areas of western Ngamiland, in the Okavango Panhandle area, and in the Central Kalahari Game Reserve.

The Ju/'hoansi San of the Dobe area sought to further institutionalize their land and resource rights in western Ngamiland. One way that they have gone about this is through establishing new water sources, one successful one being at !Ubi (Qubi), a Ju/'hoan community that is the most important n!ore in the Dobe complex of n!oresi, (Ju/'hoan traditional territories). The !Ubi n!ore is some 230 sq km in size and is the only n!ore besides Dobe itself in which there are Ju/'hoansi residents living year round.

In the process of applying for water rights in western Ngamiland, individuals have on occasion attempted to outmaneuver their communities and obtain individualized rights over water points, something that has not gone down well with other Ju/'hoansi, who have pushed for rights to be given to communities rather than individuals, something much in keeping with Ju/'hoan traditions and sensibilities. Fortunately, these efforts have not been successful, and there is still a possibility that the various family groups at Dobe who have traditional territorial rights in the region around Dobe will be able to obtain title over their n!oresi, which they can then manage through a representative community body such as a trust.

Another way the San attempted to obtain land and resource rights was through engaging in community-based natural resource management (CBNRM). The Botswana government had passed legislation in the 1980s and 1990s that made it possible for local people in communal (tribal land) areas to gain rights to wildlife resources if they formed a community-based institution, usually a community trust, and then applied to the Department of Wildlife and National Parks for a wildlife quota for the area where they resided.

In October 1997, the people of /Xai/Xai, a community of some 350 people in western Ngamiland, formed the /Xai/Xai (Cgae Cgae) Tlhabololo Trust. In exchange for the sub-leasing of some of the wildlife of the controlled hunting areas to which the people of /Xai/Xai had access (NG 4 and NG 5, which together make up an area of some 16,966 sq km), the trust was in a position to make as much as P1,000,000 per year. In August 2000, there were 24 people employed by the safari operator, and food, medicines and other goods were being supplied to the population of /Xai/Xai as part of the joint venture agreement. There were at least half a dozen community trusts that had majority San populations in Botswana in 2000, some of them in and around the Okavango Delta region and others in the western part of the country in North West, Ghanzi, and Kgalagadi Districts.

In January 2001, however, the Ministry of Local Government stipulated that the community trusts that had been formed in the 1990s and early part of the new millennium in Botswana no longer had the right to retain the cash that was generated from their operations; the resources instead were supposed to go to the district councils. The Botswana government decision was challenged by non-governmental organizations, international donors, and San themselves. At the time of writing, no final decision had been reached on the status of the community trusts in Botswana.

Cultural and Language Rights

The language rights issue in Botswana has been an ongoing concern of the San for years. Botswana government policy is such that the languages taught in schools in the country are Setswana and English. There is no mother tongue education in the so-called minority languages, such as Ju/'hoan, Nharo or !Xoo. San children who go to school must learn Setswana when they start their education, and they are sometimes discouraged from speaking their own languages. The rights of minorities to speak their own languages and promote their own cultural traditions was the subject of a symposium held at the University of Botswana ("Challenging Minorities, Difference, and Tribal Citizenship") from May 23-26, 2000. At that meeting, several San spoke out on the importance of being able to use and teach San languages.

Efforts continued to be made in 2000 to engage in minority language education activities as part of the Nharo Educational Program at D'Kar in Ghanzi District, and the work of the Village Schools Program (VSP) in Namibia, in which the Ju/'hoan language is being taught, has important potential implications for Botswana San (see LeRoux 1999; Batibo and Smieja 2000). Thus far, however, the government of Botswana has not made a formal decision to allow mother tongue education in minority languages in the Botswana school system. The future of the San of Botswana depends very much on their ability to convince the Botswana government, international agencies, and non-governmental organizations of the importance of paying attention to social, economic and cultural rights, which they see as a matter of cultural as well as physical survival.

References

Batibo, Herman M. and Birgit Smieja, eds. (2000) *Botswana: The Future of the Minority Languages.* Frankfurt am Main and Bern: Peter Lang.

LeRoux, Willemien (1999) *Torn Apart: San Children as Change Agents in a Process of Acculturation.* Ghanzi, Botswana and Windhoek, Namibia: Kuru Development Trust and the Working Group of Indigenous Minorities in Southern Africa.

Republic of Botswana (1992) *Wildlife Conservation and National Parks Act, 1992.* Gaborone, Botswana: Republic of Botswana.

Republic of Botswana (2000) "National Parks and Game Reserves Regulations" (27 March 2000), Botswana *Government Gazette.* Gaborone, Botswana: Republic of Botswana.

SOUTH AFRICA

The policy situation for indigenous peoples in South Africa shifted repeatedly during 2000, with different government departments being more or less helpful but with no coherent policy guidance or political commitment emerging from the Cabinet or the President.

In 1999, President Thabo Mbeki demonstrated his government's commitment to redress for indigenous peoples by accelerating land restitution to the ‡Khomani, !Xû and Khwe peoples. However, this momentum did not continue into 2000. Mbeki's desire to stake out South Africa's leadership position on human rights in Africa and at the UN was eclipsed by other events at home, including a weakening currency and a debacle over the President's views on AIDS and other public relations problems.

South Africa Recognises Indigenous Peoples

The year started auspiciously with South Africa openly supporting the UN Declaration and the Permanent Forum during a Commission for Human Rights debate in Geneva in March 2000. South Africa stated unequivocally that it recognises the presence of indigenous peoples in South Africa and challenged other African countries to be honest about the issue. UN watchers noted that South Africa might be able to encourage Canada and other sympathetic countries to accelerate the speed of processing of the Draft Declaration on the Rights of Indigenous Peoples (UNDDRIP). The Department of Foreign Affairs was keen to develop a coherent policy on the UN Permanent Forum and UNDDRIP. However, South African foreign policy can only be articulated following clarification on related domestic policy, which has yet to be achieved (see below).

South Africa and Canada participated in a special joint briefing by the Indigenous Peoples of Africa Co-ordinating Committee (IPACC) and grassroots activists from Burundi and Algeria, where there have been cases of extreme human rights violations against Batwa Pygmies and Amazigh (Berbers) respectively.

At home, the chairperson of the South African Human Rights Commission (SA-HRC), Dr Barney Pityana, took the bold step of challenging the African Commission on Human and Peoples Rights to investigate the plight of indigenous peoples around the continent. The proposal was hotly contested by some Commissioners but was eventually accepted as a topic for research. South Africa then commissioned its own report on the status of indigenous peoples' rights in South Africa and related international issues.

The Concept of 'Indigenous Populations' Causes Delay in the Release of SA-HRC Report

A year on, the SA-HRC report on indigenous rights has yet to go on public release as it has become ensnarled in the bureaucratic system of the DCD / DPLG, which was being reorganised and reprioritised from above (see below). The SA-HRC report apparently deals with some of the conceptual difficulties of recognising an 'indigenous' population within a broader African society, as well as making a series of recommendations to help sustain indigenous identity and rights based on international experience. The most dramatic of these is likely to be the recommendation to facilitate cross border movements by indigenous peoples into Namibia and Botswana. The SA-HRC report allegedly argues that the right to cultural survival and equality requires such mobility. As borders are a very sensitive issue in Africa, this recommendation, which pits domestic constitutional principles against regional bureaucratic practices, is likely to cause some difficulties for Pretoria. As recently as 1999, ‡Khomani San were arrested for walking a few metres past the barbed wire fence that separates families living in South Africa and Botswana.

Concurrently, the Department of Foreign Affairs was stymied from any further policy initiatives until the Department of Provincial and Local Affairs (DPLA) had settled the domestic policy.

The Mandate of the Department of Constitutional Development (DCD) Causes Problems

The crux of the problem revolves around the mandate of the Department, which is meant to handle both Constitutional issues and the specific brief to investigate the claims of those identifying themselves as indigenous peoples in South Africa. This Department is also meant to guide the Cabinet in policy development, first at domestic level, then as foreign policy.

Originally, the Department of Constitutional Development (DCD) had a mandate to investigate the traditional chieftaincy system of the Khoe and San peoples. Historically the San did not have 'chiefs' but rather a complex system of family 'owners' of water sources, and other leadership roles, such as healers, trance-dance shamans, hunters, etc. Similarly, whatever chieftaincy system existed amongst Nama people in South Africa disappeared in colonial times. In contrast, Griqua groups still hotly dispute their respective claims to traditional leadership. The situations of Griquas and the other indigenous peoples in the country vary significantly. Griqua groups were more thoroughly assimilated into Afrikaans-speaking Protestant culture and the associated 'Coloured' identity of the colonial and *apartheid* periods. Nama groups along the Orange River and the ‡Khomani (or more accurately the N||n‡e) of the Kalahari have, maintained their threatened language and many still have access to important traditional knowledge systems, including advanced knowledge of plants, animals and the environment. The !Xû and Khwe populations immigrated from Angola and Namibia bringing robust language and cultural traditions that were not so greatly eroded by the extensive aggression of the colonial and *apartheid* administration.

This diversity of historical experience and traditional identities became more complex when a new element claiming indigenous identity and insisting on participation in the DCD's investigation appeared. A group of people previously identified as being 'Coloured' (i.e. of mixed European, Asian or African descent), emerged to claim that they were the inheritors of historical Khoe cultural entities throughout the country. Relying on written historical documents, the Khoe-revivalists laid claim to chieftaincy status and reclaimed (Dutch) names of Khoe ethnic and cultural groups that had ceased to exist up to two centuries earlier.

The DCD was faced with a myriad of complicated claims to chieftaincy, on the one hand, and an evident situation of rural indigenous peoples without any chieftaincy systems but with serious economic and social problems typical of indigenous people around the planet on the other.

The DCD launched a research programme to clarify the claims and needs of the communities, including a report on traditional chieftaincy systems. Halfway through the year, the national government restructured the DCD, turning it into the Department of Provincial and Local Affairs (DPLA). The indigenous portfolio should have been shifted to the Department of Justice but, due to capacity problems and logistics, it remained with the DPLA, albeit with decreased importance and little hope that major policy advice would be forthcoming.

In 2001, the DPLA was again restructured and renamed the Department of Provincial and Local Government (DPLG). The DPLG has been stripped of all constitutional monitoring responsibilities. As a result, the report on Khoe and San peoples' needs and claims has been jammed in a bureaucratic process with no evident way out. The long awaited SA HRC report on indigenous rights has become one of the victims of this policy deceleration. The SA HRC report, which is itself tied to the African Commission on Human and Peoples Rights research project, is being held back by the DPLG Minister until other matters are resolved relating to broader policy on leadership amongst majority ethnic groups.

The Khoe and San research project is being incorporated into a larger DPLG process of reviewing the traditional chieftaincy system of the majority population (Bantu language-speaking peoples, recognised by both the colonial and apartheid regimes). There is little likelihood that the Black chiefs will accept that the term 'indigenous' should have a usage restricted to Khoe and San peoples, particularly when it is being associated with 'Coloured' nationalist revivalist groups. 'Coloured' South Africans are perceived to have enjoyed certain special concessions and rights during the apartheid period, a fact not forgotten by Black politicians and leaders today.

Implementation of Basic Language Rights Leads to Renegotiation of San and Nama Leaders' Status

On an optimistic note, the Khoe and San Language Body (KSLB), a constitutionally and legally created structure, has increased its capacity and started to have a policy impact. After a year-long organisational development process sponsored by the South African San Institute (SASI), the KSLB is starting to make its presence felt. KSLB has called for the restoration of Khoe and !Ui place names in the Northern Cape Province, including the restoration of the name of the Orange River, originally known as the *Kai !Garib*. The KSLB will mount increasing pressure on the government to implement Nama language education along the Kai !Garib, as well as insisting on the creation of effective alphabets for !Xû and Khwedam. San and Nama leaders see implementation of their basic language rights as the foundation for renegotiating their status within the country and winning back the respect of their own youth.

In Gordonia district, SASI helped the ‡Khomani community locate more of its elders who speak the almost extinct N|u language, the very last variety of the !Ui language family once spoken across South Africa. 25 N|u speakers have been found, although four died in 1999-2000. In October and November 2000, twelve elders journeyed back to the Kalahari, to their newly restored land, to teach their language to enthusiastic youth who have grown up in urban township areas. The language learning project is part of an overall co-operation between SASI and the community to help manage and restore cultural knowledge systems and traditional skills. Mapping of the history of the district's San is at an advanced stage and is being used in negotiating joint management and usage rights inside the Kgalagadi Transfrontier Park.

San Activists Press for Recognition of Rights within National Park

The topic of joint management of the National Park remains a controversial issue, and a high priority for San activists. Currently, the San have legal ownership of an unspecified 25,000 hectares inside the Park as part of the 1999 land settlement. However, San leaders are asking for broader recognition of other rights within the Park, including the right to visit grave sites, conduct research and training, conduct sacred rituals and, ideally, to sustainably harvest natural resources. The South African National Parks (SANP) remains ambiguous about whether it sees the land settlement as part of a joint management arrangement that would see greater use of traditional knowledge systems in conservation, tourism and management, or whether the land settlement is an attempt to contain the perceived threat to the Park.

!Xû and Khwe activists continued to advance the process of moving their 4500 people out of an impoverished tent city on military land to the new and fertile land at Platfontein, after their successful land claim. !Xû and Khwe leadership structures continue to strengthen, with a new generation of youthful leadership playing an important role in interaction with the State. The arts and crafts projects advanced very successfully, with a new shop opening in Cape Town to help market the variety of traditional and contemporary products. With the support of the South African Broadcasting Corporation (SABC), the !Xû and Khwe communities launched the first radio station to broadcast in San languages. Radio XK-FM broadcasts locally in both !Xû and Khwedam, neither of which yet have a written alphabet.

The International Labour Office (ILO) project on Indigenous and Tribal Peoples commissioned and published a report on South African Indigenous Peoples, looking at both needs and policy trends. The report is available from the ILO office in Geneva.

SOUTH ASIA

BEST COPY AVAILABLE

SOUTH ASIA

BANGLADESH

Chittagong Hill Tracts

Despite an agreement between the Government of Bangladesh and the Parbattya Chattagram Jana Samhati Saamiti (JSS) in December 1997, aimed at bringing peace to the volatile region of the Chittagong Hill Tracts, the situation remains fraught and uncertain. There is widespread concern that the Peace Accord has not provided the indigenous peoples of the CHT with their promised regional autonomy as the Government has not honoured its obligations under the Accord.

Three years on, the Accord remains unimplemented in key areas such as empowerment of the Regional Council, establishment of a land commission, rehabilitation of the internally displaced Jummas, resettlement of the state-sponsored settlers outside the CHT, and withdrawal of the armed forces from the region. But what has emerged as another complex issue in restoring peace to the CHT is the internecine tension between the JSS and the United Peoples Democratic Front (UPDF). The UPDF was formed by factions of the Hill People's Council (Pahari Gano Parishad), the Hill Student's Council (Pahari Chattra Parishad), and the Hill Women's Federation (HWF) who were opposed to the Accord which, in their opinion, does not meet the Jummas' demands for full regional autonomy.

Attempts have been made to resolve the differences between the two parties – which are more in terms of approach rather than in aims and objectives – such as the initiative of a group of respected Jumma elders including Upendra Lal Chakma of the Jumma Refugee Welfare Association. So far, the two groups have not yet come to an understanding although they have met on various occasions. In addition, members of both groups have been arrested and/or detained in police custody and in jail (especially from the UPDF group). On 12 January 2001, Sanchay Chakma, a leading member of the UPDF, was arrested during a public meeting in Chittagong, together with eight other UPDF members and supporters; they have not yet been released. Within this environment, recent reports indicate that there has been a rise in petty crimes and armed robberies. However, the most disturbing aspect is that this internal tension provides the Government with an excuse to justify the continued presence of the armed forces in the area.

Efforts are ongoing for the JSS and the UPDF to agree on cooperation towards strengthening indigenous self-rule in the CHT, including within the parameters of the Accord, and to terminate their confrontational relationship. It is hoped that the two parties will resolve their differences soon for the sake of the Jummas' collective interest.

Peace Accord

The implementation of the Peace Accord remains a contentious issue. Despite Government claims that 98% of its provisions have been implemented, the implementation process has been criticized both at home and abroad.

In September 2000, a parliamentary delegation of the European Union described the implementation as proceeding "very slowly" and emphasized the urgency for full devolution of power to the Regional Council and the Hill District Councils, the withdrawal of the armed forces from the CHT and the resettlement of the Bengali settlers outside the CHT. The delegation clarified that the EU has decided to make future financial assistance contingent upon tangible progress in implementation of the Accord. Jyotirindra Bodhipriyo Larma, leader of the JSS and the chairperson of the interim Regional Council, has also been persistently demanding full implementation of the Peace Accord as per its terms and conditions. He has identified non-implementation of the Accord as the main reason for the increasing instability in the CHT.

Although some legislative steps have been taken vis-à-vis the councils, the practical implementation of a transfer of power to the Regional Council (RC) and the Hill District Councils (HDCs in Bandarban, Khagrachari and Rangamati) has not been achieved. The civil and military bureaucracy of the Government still retains the most important powers, such as law and order and land administration.

The active role played by the armed forces in the CHT also continues. The 1973 order imposing military rule in the CHT remains in force and only a few of the camps have been dismantled so far (a JSS report claims only 31 out of 500). There are reports of human rights abuses, arrests, intimidation and harassment committed by the armed forces, often in collaboration with settlers. Amnesty International reports that incidents have occurred that are reminiscent of past army practices, which resulted in the killing of indigenous people and setting their homes on fire (*Bangladesh: Hu-*

man rights in the CHT, 2000). There are also reports of rape, sometimes of young girls.

Land Rights

The erosion of the land rights of indigenous Jummas continues unabated by means of different measures, including non-implementation of the Accord and related agreements.

In April 2000, Justice Abdul Karim was appointed to lead the Land Commission, which is to be responsible for the adjudication of land disputes in the CHT. However, the commission is not yet fully operational and its other members, including the traditional chiefs of the CHT, have not yet been formally appointed. The Commission is to decide all land-related disputes in the CHT, and its decision is to be final. It is essential that the Land Commission is operational soon and that it adopts an objective and unbiased approach to conflictive land disputes.

This is of grave importance when analyzed within the context of the influx of some 400,000 non-Jummas, brought into the CHT between 1979 and 1984 by a state-sponsored population transfer programme. These settlers were allocated land that rightfully belongs to the Jummas, and the Jummas were either forcibly evicted from their traditional lands to make way for the settlers or, within the turbulent climate of settlement, militarization and oppression, sought refuge in neighbouring countries or in remoter forest areas. It is clear that most, if not all, potential land conflicts will be related to the population transfer programme, a practice that has been condemned in international law as unlawful and amounting to a gross abuse of human rights.

It is thus even more disturbing to note that the chairperson of the Task Force, set up for the rehabilitation of the returning Jumma refugees and the internally displaced, has decided to include 38,156 settler families as "internally displaced", much to the outrage of the indigenous peoples, including the JSS. They fear that this will enable the settlers to claim the lands they were illegally allocated by the Government.

Many of the Jumma refugees have not had their ancestral lands returned to them as was agreed by the Government as a precondition to their return to the CHT (some of these are under occupation by the settlers). In its recent report on Land and Human Rights in the CHT, the CHT Commission estimates that, with the 90,208 Jumma and 38,156 settler refugee families identified by the Task Force, more than half of the CHT population has been displaced by the 25-year long conflict (*Update 4,* 2000).

The acquisition and leasing of lands in the CHT also continues unabated despite the Accord and existing legislation. The forest department has been acquiring lands in order to create Reserved Forests for afforestation purposes. This will effectively debar the indigenous peoples from using the forest and its resources, and make any contravention a crime. Executive orders passed in 1992, 1996 and 1998 to demarcate nearly 220,000 acres as Reserved Forest remain in force despite repeated demands for their revocation.

There are also allegations that Deputy Commissioners in the three hill districts are leasing out lands to non-indigenous persons, and the military has taken out a lease over 30,000 acres of land in the Bandarban district for an artillery training centre, which will displace an estimated 25,000 indigenous people. These acquisitions and transfers are contrary to the provisions of the Accord as well as existing CHT legislation requiring that no lands may be leased, sold or otherwise transferred without the prior approval of the hill district councils. A protest rally against these land acquisitions was organized in Bandarban in October 2000, which was supported by all sections of the indigenous people, including the different political groups and their student and youth wings, and the traditional leaders.

Another threat to the land rights of the indigenous Jummas is that caused by mining. United Meridien Company of the USA found large reserves of gas in the CHT and there are plans to start drilling in the Baghaichari, Jurochari and Dighinala areas. This will not only result in displacing the indigenous peoples living in these areas; it is also a major threat to their health and well-being, in addition to causing environmental degradation. Since gas (and oil) are highly combustible, it is highly likely that swidden or shifting cultivation - which involves burning of vegetation - will not be allowed in the vicinity of the gas (or oil) drilling sites. This will almost certainly lead to further marginalization of the already impoverished indigenous farmers in the CHT.

What is even more alarming is a Government plan to raise the level of the Kaptai reservoir by 14 feet in order to produce two 50 mega-watt hydro-power units. The project is co-financed by the Japan Bank of Investment Corporation (JBIC). The Kaptai dam was constructed in 1960 flooding 40,000 acres of fertile rice-fields and uprooting over 100,000 indigenous Jummas (many of whom remain internally displaced). To raise the water level of the lake will have devastating socio-economic and environmental consequences for the indigenous peoples.

The Government's Power Development Board is eager to go ahead with the programme despite its adverse impact on the local people. The Board has publicly criticized community-based NGOs that have facilitated dialogue on the human rights dimensions of the proposed programme in an effort to highlight its effects. There are indications that the programme will be implemented despite the protests of the indigenous people.

Health and Education

A rural assessment report on Livelihood Security in the CHT published in April 2000 by CARE, an international NGO, finds that the Jummas face major health and education problems. It reports that "malaria and diarrhoea are endemic in the CHT and constitute the most common causes of child mortality", which is already high in the CHT. It reports that only 26% have access to safe drinking water, especially in remote areas, where tube wells often run dry for part of the year. The report also examines the education level in the CHT and finds that it is low, with a high drop out rate, especially among girls. It attributes this to the fact that instruction is in Bengali, which is not the mother tongue of the indigenous children, and discrimination against indigenous students.

However, the major issue was the finding that most indigenous communities face moderate to severe food shortages caused mainly by the scarcity of land, which is exacerbated by the influx of plains settlers onto the ancestral lands of the Jummas, as well as by the practice of turning traditional lands into reserve forests and leasing of lands to non-indigenous persons (about 5,000 acres in Rangamati district alone). There have been reports of starvation in remote areas of the Hill Tracts and, although some international agencies have provided emergency relief, the problem continues.

Religious Intolerance and Discrimination

The indigenous Jummas face discrimination in all areas of their daily lives. This problem is highlighted by the interim report of the UN Special Rapporteur on the Elimination of all forms of Religious Intolerance (9 August 2000). The Special Rapporteur, Mr. Abdelfattah Amor visited Bangladesh, and the CHT, in May 2000 and points out in his report that although the Constitution of Bangladesh does not formally recognize the indigenous peoples as such, the Prime Minister - in her 1999 speech to the Hague Appeal for Peace Conference - referred specifically to the question of the CHT and to the right of an indigenous people to preserve its own identity, culture, tradition and values.

The report refers to the Babu Chara Bazar incident of October 1999 when the army, assisted by 150 settlers, attacked Jummas at the bazaar and ransacked a Buddhist temple, attacked the monks and desecrated statues of the Buddha (many Jummas are Buddhists). The Special Rapporteur also reports that the indigenous peoples are often subjected to "covert pressure from Islamic NGOs, and even Muslim extremist groups seeking to convert them to Islam, notably in return for services or money. Certain representatives interpreted the financial assistance provided by the State for the construction of new mosques and madrasahs (religious schools) as a discriminatory policy favouring Islam since, in contrast, indigenous religious institutions received meagre public subsidies."

In his report, the UN Special Rapporteur finds that the State appears to be "more sensitive to the interests of Muslims", and that this is reflected in the obstacles faced by non-Muslims in terms of access to public-sector jobs, especially to positions of responsibility. He goes even further and identifies this approach as the reason for the delays in full implementation of the Peace Accord in favour of the ethnic communities/indigenous peoples in the Chittagong Hill Tracts. In conclusion, the Rapporteur encourages the authorities to apply the Accord fully, and as rapidly as possible, as this Accord is fundamental for the survival of the indigenous peoples of the CHT and the preservation of their ethnic, religious and cultural identity.

Development

Since the Peace Accord, a large number of national and foreign NGOs and international agencies (UNICEF, UNESCO, World Bank, Asian Development Bank) have commenced operations in the CHT. However, with the implementation process of the CHT Accord lagging behind, and the Regional Council and the Hill District Councils not yet fully empowered, the indigenous peoples do not feel that any development undertaken in this interim period will be fully sustainable, unless and until it is undertaken with their consent and participation at all levels. However, many initiatives are simply implemented without any meaningful involvement on the part of the indigenous peoples and without taking into consideration their special characteristics, and for this reason many of the major national NGOs have also been criticized.

The European Union adopted a Resolution on 17 January 2001 calling on the Government of Bangladesh to accelerate implementation of the Accord, including empowerment of the Regional Council and establishment of the Land Commission. It also reiterated its support for the full resettlement and rehabilitation of the Jumma refugees and internally displaced as well as for the possible resettlement of the 400,000 Bengali settlers outside the CHT. However, it reaffirmed that any financial assistance would be conditional upon substantial progress in implementation of the Peace Accord and the need for culturally appropriate projects (B5-0048/2001/rev.1).

However, Denmark, a member country of the European Union and a leading protector of indigenous rights in international fora, has entered into a co-financing project with the ADB for an infrastructure project in the CHT, primarily for roads and bridges, at an estimated cost of $60.3 million. Given the continuing militarization of the area, the Jummas fear that this will only serve state interests to the detriment of their rights.

The Garos: Update on the Chailtachara Incident

On 18th December 1999, a group of Bengali Muslims attacked the Chailtachara Garo village in the district of Moulvibazar, with the intention of occupying the village and its surrounding forest lands. The village Headman, Gregory Nokrek, was stabbed and houses were looted. At that time, Gregory Nokrek appealed to the police for justice, but this was not forthcoming (see *The Indigenous World 1999-2000*, p. 293f). National newspapers, intellectuals and writers reported on the incident and expressed their concern and support. In the meantime, however, the Garo village of 20 families with 168 acres of hill forest has been occupied by Bengalis in the name of Kormodha Bohumukhi Saamity, an organisation led by the chairman of the Bengali Union Council. The trees have been cut down and sold. Headman Gregory Nokrek has fled to India. It is reported that he is now working in a coal mine in Meghalaya, India. There is no information as to the whereabouts of his wife, son's wife, brother's daughter or the one-year old grandson who were all abducted.

Garo and Khasi Communities Threatened by Eco-Park

Recently, a plan for the establishment of an eco-park on Khasi and Garos land in the *Moulvibazar* forest area was revealed. More than 1,000 Garo and Khasi families will be evicted if this plan goes ahead. The Environment and Forest Ministry did not consult with local indigenous people before planning this eco-park.

The National Adivasi Coordination Committee opposes the creation of the eco-park. In February 2001, a large public gathering and hunger strike to stop the eco-park on Khasi and Garo ancestral land was organized.

NEPAL

Indigenous Peoples Demand Constitutional Amendments

The Nepalese Indigenous peoples are campaigning for the amendment of the present Constitution of the Kingdom of Nepal. A National Consultation on Integrated Strategies in Promoting the Rights of Indigenous Nationalities in Nepal, held at Dhulikhel in Kavre District (Central Nepal) from January 16 to 20, 2000 and organized by the Nepal Federation of Nationalities (NEFEN) and Minority Rights Group International (MRG), had proposed constitutional changes to abolish all the discriminatory clauses of the constitution, statutes and common laws in the country. This national consultation was preceded by two regional meetings: Eastern regional consultations were held from January 4 to 5, 2000 at Dharan, Sunsari District, and Middle and Western regional consultations from January 7 to 8, 2000 at Narayanghat, Chitwan District. The central meeting was attended by representatives of NEFEN, legal professionals, intellectuals, representatives of indigenous peoples' organizations and different political parties, human rights activists, former members of Parliament, a former member of the Constitution Drafting Commission of 1990 and members of the Indigenous Women's Organization. In total, 59 delegates participated in the national consultation, 17 of them women. The national consultation reviewed:

1. developments pertaining to the protection and promotion of the rights of Indigenous nationalities in Nepal,
2. constitutional common law provisions and statutes affecting indigenous nationalities in Nepal,
3. consideration of the use of international bills of rights, declarations, covenants, agreements, other constructive arrangements and emerging rights and declarations regarding the rights of indigenous peoples in the context of Nepal,
4. legal and other provisions affecting the rights of indigenous women in Nepal, and
5. policy recommended for the promotion and protection of the rights of indigenous nationalities and the strategies to achieve this.

As a result, a number of recommendations for constitutional and legal amendments were passed. 27 proposals for constitutional amendments were listed and seven concrete strategies were decided on. Another seven amendment proposals concerned the Muluki Ain (civil code), also accompanied by different concrete strategies. 37 amendment proposals concerned 30 other laws, and nine proposals were made on indigenous women's issues. Finally, the consultation demanded the formation of a Constituent Assembly for drafting the constitutional amendments.

The consultation also proposed demanding self-government by indigenous peoples of their social, cultural and political development. Under the present Local Self-Government Act, the local administrative units are the 75 District (DDC) and 4,000 Village Development Committees (VDCs), which have not been created in accordance with the interests of indigenous peoples. Indigenous groups are also not properly represented in these units. The consultation demands for the re-division and re-organization of these units on the basis of region, language, and numerical strength of the ethnic groups. The election system should also be arranged in such a way that the majority people of the concerned area were properly represented. A customary rights act should be framed in order to safeguard the intellectual property right of the indigenous peoples and, in order to guarantee access to, and control and management of, traditional lands and other resources by indigenous groups, the respective laws should be amended.

Not only the indigenous peoples but also the mainstream people and major political parties have now taken up the discussion on amending the present constitution.

Communities Demand Equal Language Rights

Despite the constitutional and legal recognition of the many languages spoken by the different ethnic groups in Nepal, in June 1999 the Supreme Court issued an order against the decisions to use local languages as additional official languages on the part of the Kathmandu Metropolitan City, Dhanusha District Development Committee and Rajbiraj Municipality (see *The Indigenous World 1999-2000).*

The different language communities believe that the decision of the Supreme Court is highly prejudiced and against their aspirations. The Nepal Federation of Nationalities (NEFEN) therefore organized the First National Conference on Linguistic Rights, which took place in Kathmandu from March 3 to 4, 2000. 78 indigenous and human rights organisations, including representatives from 44 language communities, gathered in support of the cause for equal language rights. The Conference formulated a doctrine of equality in the language sphere and passed the National Declaration on Linguistic Rights, containing 31 articles. The conference rejected the decision of

Photo: Sv. Å. Lorenz Christensen

Photo: Sv. Å. Lorenz Christensen

the Supreme Court and demanded amendments to the articles of the 1991 Constitution of the Kingdom of Nepal related to language discrimination.

The Nepal Bhasa Sangharsa Saamiti organised a one-day national symposium on how to implement the National Declaration on Linguistic Rights in Kathmandu on March17th, 2001. Nepal Tamang Ghedung has formed a drafting Committee of Lawyers under the Chairmanship of Ex-Attorney General Sarbagya Ratna Tuladhar to prepare a draft "Bill of Language Act" with the aim of presenting it at the forthcoming session of parliament.

Language Communities all over Nepal observed a "Black Day" on June 1, 2000 in commemoration of the day the Supreme Court of Nepal issued an order to stop the use of indigenous and local languages in local self-governing bodies. Nationwide mass demonstrations, poster and pamphlet campaigns, processions and mass meetings were organised. It was decided to continue the "Black Day" until the Government changes the laws and by-laws of the country to ensure equal language rights.

Bill on Nationalities Still Not Tabled in Parliament

The government had promised to table the bill on the "National Academy for the Upliftment of the Nationalities" at the 1999 parliamentary session. By 2000, however, it had still not been taken up. The bill was simply thrown into the pigeonholes of the members of the parliament. It is also important to note that in the bill, which was prepared by the Ministry of Local Development, the name of the Newar people has been dropped from the approved list of 61 indigenous nationalities. This signifies a continuation of the same divide-and-rule tactic the government has used to control the indigenous peoples over the last 233 years. The ninth development plan of Nepal also states that the government will form an "Indigenous Peoples' Council" at district and central level for the development of indigenous nationalities all over the country. And yet nothing has materialised.

Campaign to Include Ethnic Identity in Population Census

For many years, the national population census has been used by the ruling cast Hindu to confirm their majority in the country. The government has in the past refused to publish population data broken down by ethnicity. Owing to mounting pressure from the indigenous nationalities, the State for the first time published preliminary data on ethnic/caste population in 1991. However, many indigenous communities were not identified in the 1991 census, and the population figures for many of those who are on the list are too low. Furthermore, while the government of Nepal has recognised 61 groups as indigenous nationalities, 35 of these are not enumerated in the officially published list of the 1991 Population Census. Since the government of Nepal is again conducting a population census in June 2001, indigenous nationalities are now campaigning to be included in the forthcoming census. A delegation of indigenous organisations under the leadership of Mr. Parshuram Tamang, General Secretary of NEFEN, met the Vice Chairman of the National Planning Commission and presented a memorandum demanding the inclusion of all ethnic groups in the population census. Nepal Tamang Ghedung (NTG), an indigenous peoples' national organization, has also demanded the establishment of a "National Population Census Commission" to guarantee an impartial census.

Move to Combat Trafficking of Women

Trafficking of women is a growing problem in Nepal. To date, approximately 200,000 girls and women have been trafficked from Nepal, one third of them under the age of sixteen. Estimates of the number of women trafficked from Nepal to India every year vary widely, from 5,000 to 20,000. 90% of these women and girls come from indigenous communities. Nepal Tamang Ghedung organised a round table to bring NGOs and governmental bodies together to review the existing State policy and activities with regard to this problem and to draw up an action plan for the future in 2000. On the basis of the recommendations of the round table, Nepal Tamang Ghedung has asked the government to institute a new law to combat the trafficking of women and girls in Nepal, to discuss with the Government of India possible cooperation to repatriate trafficked women, and to push the proposed convention of the South Asian Association for Regional Cooperation (SAARC) against trafficking of women and girls in South Asia.

Human Rights Violations Continue

The Nepal Communist Party (Maoist) has been involved in an armed struggle known as the "People's War" to establish a socialist republic for five years now. More than 1,500 people have been killed during the fighting between the government forces and the Peoples' War Group. Most affected by the armed conflicts are the indigenous peoples and their territories. In these territories, it seems, two governments are present: the representatives of the Kathmandu government in the District Headquarter, and the People's War government in the rural areas. The indigenous peoples' lives and property have increasingly come under threat. Human rights violations such as rape, indiscriminate killing, kidnapping, torture and disappearances are common. It was expected that there would be dialogue between the government and the Peoples' War Group to minimize human rights abuses. But the long awaited dialogue did not happen, allegedly largely because the government failed to create an environment conducive to dialogue.

Fourth National Congress of NEFEN

The Nepal Federation of Nationalities held its Fourth National Congress from August 7 to 8, 2000 in Kathmandu, demonstrating the variety of culture of the various ethnic groups of the country. The ornaments, dress, languages and faces of five dozen indigenous nationalities at the opening ceremony on 7 August 2000 reflected how diverse Nepal is in terms of religion, culture and language. When the federation was set up ten years ago, only eight groups were attached to it. NEFEN's fourth national congress was attended by representatives from 33 member organisations. Although just a decade ago, ethnicity and indigenous issues were limited to academic exercise, today they are the subject of a lively national debate.

Kamaiyas Struggle for Survival

For many Kamaiyas, the Tharu indigenous people who became bonded laborers, the 17th July, 2000 was a day of victory. On that day, the Government of Nepal decided to outlaw the practice of keeping Kamaiyas, which has been prevalent in Banke, Bardiya, Dang, Kailali and Kanchanpur districts of Nepal (see *The Indigenous World 1999-2000)*. But the Kamaiyas could not know that the victory would soon be followed by anguish. A month after the government decided to liberate the bonded laborers, thousands were kicked out of their shelters by the landlords, and 2,525 families were reported to be roaming about homeless during the monsoon. They were asked to pay back their debt to their former "owners", and cases were reported of Kamaiyas being thrashed, attacked with weapons, and their shelters being set on fire. Ultimately, all this is the result of the lack of a rehabilitation program. The Kamaiyas have appealed for help to Village Development Committees, District Development Committees and non-governmental organisations in their thousands, due to their lack of food, medicine and shelter. Some of the political organisations have turned a blind eye to the plight of the Kamaiyas since they see them as supporting rival political parties. While the government has talked of a relief package for the Kamaiyas, no such aid has so far reached the remote districts. Furthermore, on December 6, the government promised between one *kattha* (3,645 square feet) and five *kattha* of land for each displaced family. None of them has yet has received any land. Apart from the fact that this amount of land would be insufficient to support a family, no system is in place to facilitate the redistribution of land. The former bonded laborers are deeply frustrated by the authorities' inaction. Many of them are now occupying the main highway linking west and east Nepal, exhibiting their plight and demanding their rehabilitation. NGOs blame the government for their inaction and the government blames the NGOs for mishandling the cause to their benefit.

Indigenous Peoples of the Terai Organise

For the first time, indigenous peoples of the lowland Terai region organised themselves with the aim of coordinating the implementation of the recommendations of the workshop held in Damak, Jhapa, eastern Terai, Nepal from December 29 to 30, 2000. The workshop was jointly organised by Nepal Tamang Ghedung and the International Alliance of Indigenous and Tribal Peoples of the Tropical Forests, South Asia Desk, Kathmandu, Nepal. The theme of the workshop was "The Terai (Lowlanders) indigenous peoples and their problems". The workshop was attended by 37 indigenous persons from the nine Terai communities and, as a result, a regional committee of the Terai indigenous peoples was formed. These indigenous peoples number less than 10,000. They are the original inhabitants of the Terai who have been dispossessed by the government's so-called "land reform". Because they could not produce documents to the Government officials, their land rights were not recognized and they became landless and homeless. Today, they are sandwiched by immigrants from neighboring India and the hill region of Nepal. Many of the Tharu people, for example, have ended up as bonded labourers (see paragraph above).

INDIA

Biodiversity Bill Introduced in Parliament

In May 2000, the Biological Diversity Bill 2000 was introduced in Parliament in fulfilment of the Convention on Biological Diversity 1992 to which India is a signatory. The objectives of the Bill are the conservation, sustainable use and equitable benefit sharing of biological diversity. The Bill seeks to regulate access in order to ensure the equitable sharing of resources and knowledge use, to protect intellectual property, local/community knowledge, to protect and rehabilitate threatened species and to involve traditional self-governance institutions. The Bill is applicable to foreigners, foreign corporate bodies and non-resident Indians (Clauses 3,4 and 6), who will have to obtain "permission" to research on and use biodiversity resources and local knowledge. The Bill provides for a centralised regulatory structure with a National Biodiversity Authority (NBA), followed by the State Biodiversity Board and the local level Biodiversity Management Committee. The NBA acts as a civil court in matters arising from the Bill's prescribed punishments for violations of its provisions, as well as for violating NBA directions.

Although this Bill has been hailed as "revolutionary" by even progressive environmentalists, this piece of paper is condemned by Adivasi and indigenous peoples' organisations as just another piece of colonial legislation. To date, the lack of regulatory legislation has paved the way for the widespread plunder of both germ plasm and knowledge - especially of Adivasis - through devious means, under the guise of research, tribal development and nature conservation by both foreigners as well as their Indian partners. The government has always shrugged it off under the specious plea of a lack of appropriate legislation. With globalisation and WTO regimes being put in place, it becomes imperative that rules be set for the efficient entry of transnational capital in order to profitably exploit the biodiversity and knowledge of people and, in fact, for its own very rapid development. Indeed, the Bill is almost explicit in its approach of neatly arranging a link-up between foreign capital and Indian capital in their plunder while parading a nationalist cloak. Indians and Indian companies need only "inform" (not get permission from) the State Biodiversity Board! In other words Indian capitalists are handled softly and given a liberal leash as if they were any better than foreign capitalists. In fact, since Indian and foreign capitalists often work in collaboration, the bill paves the way for the entry of foreign capitalists through the backdoor.

The place where the bodies of the victims of the police firing in Tapkara have been buried. Photo: IWGIA archive

Jharkhand. Photo: Roger Begrich

There is also the added threat that some bio-rich areas would be declared as "heritage sites" from which people would be displaced. Already, of the more than 600,000 displaced from around 421 Wildlife Sanctuaries and 75 National Parks, 500,000 are Adivasis. Contrary to the UN Convention on Biological Diversity, the community - the Gram Sabha - does not feature, despite the Panchayat Raj (Extension to Scheduled Areas) Act 1996, which provides primacy and supremacy of the Gram Sabha, including command over resources and ownership over minor forest products. The citizen is expressly prohibited from going to court regarding those provisions that fall within the scope of the Bill. Quite naturally, the structure implementing the Act makes no provisions for community representation. The All India Coordinating Forum of Adivasis/Indigenous Peoples in its National Workshop on Biodiversity and Adivasis/Indigenous Peoples held in New Delhi from 29-31 January 2001 had pointed out these and other weaknesses, demanding a major revision of the Bill.

Supreme Court for Big Dams

In an illogical, dangerous and anti-people verdict, the Supreme Court of India allowed the unconditional and unfettered construction of the controversial Sardar Sarovan Project (SSP). The Apex Court, in its majority judgement in Narmada Bachao Andolan's Public Interest Litigation against the SSP on 18th October 2000, refused to take any cognisance of serious issues such as cost-benefit, the claims of benefits and environmental aspects of the project along with the large displacement and rehabilitation problems. The Narmada Bachao Andolan condemned the court for apparently playing into the hands of the dam builders, dominant economic and political powers. It accused the court of neglecting its own orders and logic of previous orders, which had resulted in the suspension of the work on the dam for about five years. It was understood that the government would definitely make use of the judgement to displace people without resettlement. The court unfortunately agreed to further construction without any plan or land on which to rehabilitate the 35,000 affected families already recognised, and the almost same number of unrecognised families. In its press release, the NBA wondered how, in view of the Madhya Pradesh state government's officially acknowledged inability to provide land for resettlement of the displaced people due to the 90 meter high dam, the court envisaged the rehabilitation of more people in the event of a higher construction, when many who had been displaced 10 to 15 years ago would again have to be rehabilitated.

World Commission on Dams Report

Although the Government of India did not allow the World Commission on Dams to hold a public hearing in the country its report, which came out immediately after the Supreme Court judgement, exposed the pro-large dam bias in the judgement with unbalanced praise for the dams and the beneficial and unsubstantiated premise that rehabilitation has brought a higher standard of living for the people affected by the project. The WCD Report clearly vindicated the issues that peoples' movements had raised and struggled for during the past half century. Large dams were planned, pushed through and justified with no respect for peoples' rights to resources and development planning, and no or little place for social and environmental impact assessment in their decision-making.

The Report showed that:

- Large dams have forced 40-80 million people from their homes and lands, with impacts including extreme economic hardship, community disintegration and an increase in mental and physical health problems. Indigenous, tribal, and peasant communities have been particularly hard hit. People living downstream of dams have also suffered from increased disease and the depletion of the natural resources upon which their livelihoods depend.
- As against benefits in terms of water and power services, the price too often paid by people especially in social and environmental terms, is unacceptable and unnecessary.
- The benefits of large dams largely went to the already well-off while poorer sectors of society have unjustifiably borne the costs.

Government Secretly Preparing to Amend the 5th Schedule

The world's rapidly increasing demand for mineral resources is putting at stake the very existence of many indigenous communities and cultures. The first year of the millennium saw the battle lines of globalisation at the doorsteps of their homelands in India.

The founders of the Indian Constitution put in a few safeguards in the form of Schedules for the protection of the indigenous minorities. The 5th and 6th Schedules were the two most important protective legislation preventing transfer of indigenous land to non-indigenous persons. Violations of these schedules, however, have continued ever since. Samata, an NGO in Andhra Pradesh, took up the matter and got an historical judgement from the Supreme Court in September 1997, preventing the transfer of indigenous lands for commercial purposes. A judgement that sent ripples through the corporate world at a time of liberalization. The Indian Government was quick to react and, in an article in Mining Journal, London, assured the prospecting MNCs that they need not fear.

Subsequent appeals by the Andhra Pradesh Government and Union Government were dismissed by the Supreme Court. Unbridled commercial interests and plunder by private and global capital has thus legally been kept out of the Scheduled Areas.

However, with globalisation and liberalisation having gained ground in India, private corporations and multinational companies have put pressure on the government. The National Democratic Alliance (NDA) government at the Centre, snubbed by the Supreme Court, is now secretly preparing grounds to amend the Fifth Schedule of the Constitution, the proof of which was a secret note from the Ministry of Mines of 10 July 2000 (No.16/48/97-M.VI). The note clearly puts the interests of "foreign corporate bodies" superior to the interests of people and scheduled tribes, and suggests that the Supreme Court's judgement can effectively be subverted by effecting "the necessary amendments so as to overcome the said SC judgement by removing the legal basis of the said judgement". This is now sought to be accomplished by making an amendment to Article 244, clause 5(2) removing the prohibition and restrictions on the transfer of and sale by Adivasis to non-Adivasis for undertaking any non-agricultural operations including prospecting and mining. The secret document goes on to say that "The impasse created by the Samatha judgement can perhaps be resolved only through an amendment of the Fifth Schedule to the Constitution as opined by Attorney General. One way could be to add the following explanation after paragraph 5(2) in the Fifth Schedule:

> *"Explanation: The regulations framed under paragraph 5(2) shall not prohibit or restrict the transfer of land by members of the schedule tribe to the Government or allotment by Government of its land to a non-tribal for undertaking any non-agricultural operations including reconnaissance or prospecting or mining operations under the provisions of MMDR Act 1957."*

The attempted way out within the realm of the politico-administrative system is to simply drop (de-notify) the respective areas from the Scheduled Area list itself so as to make the SC judgement and the 5th Schedule inoperable. With the coming into force of the Panchayat Raj (Extension to the Scheduled Area) Act 1996, the struggle for self-rule at the village level has certainly received a boost (see *The Indigenous World 1996-97* p. 217-9). The Adivasis as a whole and all democratic sections of the country in general upheld the SC judgement in the Samata case as a progressive step towards understanding the right spirit of the Fifth Schedule of the Constitution. However, the attempt now to change the Constitution itself or to modify its area of application is a constant reminder that the struggle has primarily to be waged in the political arena and the space for legal action is collapsing. These plans, now exposed, are condemned by Adivasi organisations.

It was in July 2000 when the National Alliance of Mining Affected People (mm&P) got hold of the confidential letter sent by one of the State Government officials to the Union Ministry requesting them to alter the powers of the 5th Schedule. When indigenous groups got knowledge of it, a strong campaign was launched all over the country to counter the nefarious designs of the present Government. If these Schedules are amended, it will open the floodgates to alienation of tribal land.

National Alliance of Mining Affected Communities Founded

A big event in the history of communities fighting mining companies is the formation of a National Alliance of Mining Affected Communities called "mines minerals & People" (mm&P). At their National Convention in Hyderabad in May 2000, 87 different mining-related groups met under the theme *"Our Land, Our Minerals, OUR RIGHTS"*. Breaking the isolation of resistance groups, mm&P has been playing a supportive role in campaigns and advocacy.

Formation of New States

After a prolonged struggle for political autonomy, the indigenous peoples of the eastern region of the central tribal belt of India eventually succeeded in achieving statehood in the form of Jharkhand and Chhattisgarh, bordering each other. However, the indigenous peoples of the cultural region of Jharkhand living in the present non-indigenous dominated West Bengal and Orissa felt defeated and frustrated because of the failure to include their areas in the newly-formed Jharkhand state. The indigenous peoples of the Jharkhand region in general felt that the Central Government did injustice to them by forming a state named Jharkhand in which, contrary to what they demanded, they form only 27% of the total population. Chhattisgarh, with 44% of its population indigenous, was also denied the status of a state dominated by indigenous peoples by not including the border areas of neighbouring Orissa. Thus, the formation of these two states took place not on the basis of the indigenous peoples' demand for cultural autonomy but on that of administrative convenience and, as the activists of the separate state movements pointed out, of the evil design of the state, forever promoting the interests of the industrialists and transnational companies, to frustrate the cause of the people.

Jharkhand

The Tapkara Massacre

In a horrific act of State repression, the police of the newly-formed Jharkhand state opened fire on an unarmed assembly of the Mundas and killed 8 persons, seriously injuring 16 others on the 2nd February 2001 in Tapkara, the center of the Koel-Karo anti dam movement. One of the deceased, however, belonged to the minority Muslim community. The police apparently committed this heinous crime to break the unity and the struggling spirit of the indigenous peoples of the region, who had been able to stall the construction of large dams on the rivers Koel and Karo for the last 25 years or more.

This barbarous act, however, failed to dampen the struggling spirit of the people. According to the Munda Chief of the Guria lineage, the incident exposed the class-biased nature of the present government under the Right Wing Bharatiya Janat Party. In the ensuing public meetings, the people demonstrated their unity and reiterated their determination to stop the construction of the proposed dam at any cost.

The killing of the unarmed Adivasis roused strong condemnation all over the country. In Jharkhand, all the opposition political parties, peoples' organizations and civil society organizations accused the Government of being anti-Tribal and demanded its immediate resignation as well as the scrapping of the Koel-Karo Hydroelectric Project. They took up campaigns in support of the demands.

Successful Non-violent Protests in Chandil

Unlike in the case of the Koel-Karo Hydroelectric Project where the government tries to lure the project-affected people into agreeing to be relocated by offering attractive rehabilitation packages, it is doing little to rehabilitate the people affected by the Chandil dam on the Subarnarekha River in West Singhbhum district of Jharkhand. The government had completed construction of the dam's spillway by 1990/91 and had consequently fully or partially submerged 52 villages. In all, 5,000 families were displaced. Of these, only 12 % have been resettled, and these inadequately. The situation of the rest remains shocking.

The government started installation of the radial gates in December 2000. Work has, however, been stopped by the *satyagraha,* a non-violent protest in front of the office of the Superintendent Engineer near the Chandil dam site starting on 23 February this year. The protest has been initiated by the Visthapit Mukti Vahini, a people's movement functioning in the area since 1987. The VMV activists point out that if installation of the radial gates is completed (the government target is to complete it by June 2001), the dam's height will be increased by another 15 metres. This will cause large-scale submergence and displacement of another 10,000 families. To them, the government has no moral right to initiate any further dam-related work that will cause further displacement, until those already displaced by the dam are properly rehabilitated.

Jharkhand Save the Forest Movement

In response to the depleting forest cover and its extremely adverse impact on the indigenous peoples' livelihoods in several villages, the people formed 'Village Forest Protection Committees'. A forum was formed under the banner of the Jharkhand Save the Forest Movement on 19 November 2000 in Murhu, Ranchi District, with a view to uniting all these scattered initiatives. The major demands raised in the meeting were:

1. Restoration of the people's rights over forest to as they were before the advent of British colonial rule in the region in the 19th century.
2. Immediate scrapping of the Bihar Private Protected Forest Act (1952), which empowers the government to take over the legally recognized ancestral forests of the Mundas in the name of 'scientific management'.
3. Conversion of the villages within the reserved forest areas into revenue villages.
4. Arrest and punishment of the forest mafias and corrupt forest officials

To mark the occasion a website, http://jharkhandforest.com, was launched.

Orissa: Firing on Indigenous Protestors

Rayagada in Orissa is now a battlefield between indigenous people's organizations and Utkal Aluminium Industries Ltd. (UAIL), a consortium of aluminium companies including Canada's ALCAN and Norway's Norsk Hydro. Backed by the State government, UAIL has waged war against those people resisting land acquisition. For the past five years, people's resistance has been effective in not allowing UAIL to start construction. On December 16th 2000, at Maikanch Village, four Adivasis were killed and over fifty injured when the police fired on them. The incident took place as a consequence of the villagers protest against the extraction of bauxite from the nearby Bapilimali hills. In the early morning of the fateful day, 130 policemen together with the local Block Development Officer came to the village to enquire about the confrontation that had occurred the previous day between the villagers and the local political party leaders who were trying force people to give up their struggle against mining. The police were looking for the male members of the village. They beat up a woman and fired in the air to trace the absconding men. At this point, some men who were hiding in their houses came out and ran towards the hill. The police chased and fired at them from behind, indiscriminately leaving four men dead on the spot and over fifty injured. They also killed four cows. Later, the local bullies manhandled the members of the fact-finding team of the Eka Parishad when they paid a visit to the village.

The firing was no doubt part of the police strategy to demoralize and threaten the people and weaken the organizations fighting against displacement. Orissa has the dubious distinction of the largest number of multinational companies and the largest number of displaced Adivasis.

Source

Eka Parishad, Orissa

Madhya Pradesh

Indigenous Forest People Killed

On April 2, after a weeklong operation during which the houses of the predominantly Bhil, Bhilala and Korku tribes were demolished, the district administration of Dewas, Madhya Pradesh, delivered the final blow, shooting dead at least four of them in a demonstration of repressive State power.

The Dewas killings are another incident in the confrontation between the state and the Adivasis, dating from the time when the British colonial rulers made forests State property, a policy enthusiastically followed since independence. Contrary to the view of the Adivasis that holds the forest officials-contractors-politicians nexus responsible for the depletion of forests, the state's view is that the illegal use of the forest resources by the Adivasis is the main reason for the destruction of the forests, which must be stopped with a heavy hand. Thus, in Dewas, the administration targeted the Adivasi Manch Sangathan, a forum of many tribal organizations, established to assert their rights on forests. The Dewas collector, Ashok Burnwal, in at least two speeches at Pipri and Udainagar in the past two months, thundered that the Adivasis and their organizations would be crushed in six months. Beginning from March 28, he and the Superintendent of Police supervised the destruction of houses, village after village in Kadudiya, Potla, Patpadi, Jamasindh, Katukiya, Mehendikheda etc. In order to justify the crackdown, the police spread a rumour that the Naxalites (underground armed Marxist forces) had penetrated the area and were misleading the Adivasis. However, finally the people mustered the nerve to assemble at Mehendikheda in order to register a protest. The police fired at them, killing four. Evidence suggests the absence of any returned fire and thus the cold-bloodedness of the killings.

Source

Vinod Raina, SACW News

Targeting Peoples' Organisations - Yet Another Black Law

"Madhya Pradesh Special Areas Security Bill 2000" was passed by the M.P Legislative Assembly on 27 November 2000 without any significant debate and discussion. It is now awaiting the President's assent. It is publicised as a law to curb the illegal activities of certain peoples' organisations and the Naxalites.

Any organisation or group of people can be banned if their activities are declared illegal. Organisations and group ranging from an informal group of people to trade unions can be banned and they need not be registered in order to fall within the scope of this proposed law, which applies to those termed as their supporters. The lists of activities defined as illegal are very general, for example, activities that disturb the law and order or peace or have the tendency to create obstacles to the maintenance of public order etc.

The government is not bound to divulge the reasons for the ban. It does not give any opportunity to the organisations/groups to present their case before declaration of the ban. There is a provision for forfeiture of all the movable and immovable properties and assets of the banned organisations/groups. Unlimited powers have been granted to the District Collectors and the Superintendent of Police.

This law, if enacted, would have wide reaching powers and is intended to suppress all kinds of peoples' dissent, resistance and movements in Madhya Pradesh. This is made clear in the objects and reasons for the Bill, which states that danger from illegal activities of some peoples' and Naxalite organisations necessitates this. But it would be used against those who are working to protect the basic human rights of the common people.

Out of the six activities that have been defined as illegal, only one can be said to relate specifically to Naxalite activities. That is: using violent and terrorist means to create fear in the minds of the public or using arms and explosives. The other activities that are defined as illegal are very general and unclear, and can be used against any peoples' organisation, such as disturbing the public order, disturbing the peace, hindering or obstructing the working of the rule of law, its institutions and officials or which may have a tendency to do so etc. These are not extremist acts and any organisation trying to highlight the peoples' problems using non-violent or democratic means would fall within the scope of the proposed law. A number of organisations in Madhya Pradesh have announced their determination and declared they will fight the Bill.

Karnataka: Indigenous Peoples Victims of "Conservation" in Rajiv Gandhi National Park

After the brutal and forceful dislocation of 51 families carried out by the Forest Department and the Police at midnight on June 12th last year, on September 23rd 2000, a large troop of Forest Department personnel arrived at the Kolengere tribal settlement in Nagarhole to forcefully move the 30 tribal families from the settlement to a new "rehabilitation" site at Veeranahosalli, on the fringes of the National Park, and to demolish their existing dwellings. Local people tried to defend themselves from this attack, and were brutally repressed. Men and women were beaten by armed officers. Some very seriously injured individuals were admitted to hospitals at Gonikoppal and Kumara, while others were given first aid locally. Some local media, instigated by the Forest Department, falsely issued information that local people were the ones instigating the clash with the support of NGOs such as CORD, Kushalnagar and DEED, Hunsur.

The historical conflict between the Forest Department and the traditional inhabitants of the Park intensified over the last years with the Government of Karnataka's move to implement the controversial World Bank Eco-development Project in the area. The official plan went ahead, even violating the operational directives of the Bank itself with regard to the Indigenous/Tribal Peoples, as well as their constitutional rights. The Government of Karnataka has turned a blind eye to the report of the World Bank's Inspection Panel that visited the area and justified the tribals' position.

Tamil Nadu: Adivasi Reoccupy Their Traditional Land

In the state of Tamilnadu, the Adivasi Thannatchikkana Tamizhaga Munnani (Tamilnadu Front for Adivasi Self-Rule) - a loose forum of Adivasi organisations involved in the struggle for self-rule - has been quietly taking over patches of traditional lands in different parts of the state where it is active, despite the fact that unlike adjacent Kerala, there is no law here that either protects Adivasi lands from alienation or restores alienated lands. Tamilnadu Pazhangudi Makkal Sangam (Tamilnadu Indigenous Peoples Organisation) and Tamilnadu Pazhangudi Makkal Iyakkam (Tamilnadu Indigenous Peoples Movement) a breakaway group, have both formally declared self-rule and land struggle as the key to the future of Adivasis. These organisations were formed by activists of the former United Communist Party of India, which has merged with its parent body - the Communist Party of India. Efforts are on to forge joint action.

Kerala

Contempt Charges Against the Government for Failure to Restore Adivasi Land

On 6 December 2000, when the contempt of court petition filed by Dr. Nallathambi Thera came up for hearing, a Divisional Bench of the Kerala High Court, consisting of Justice P.K Balasubramaniam and Justice T.M Hassan Pillai, issued a directive to the Chief Secretary of the Government, M.Mohan Kumar, to appear in person on 18 December to frame contempt charges against him for the Government's failure to carry out the Bench's directives for restoring alienated lands to the tribals. The bench issued notices to all the District Collectors and Revenue Divisional Officers (RDOs) to show cause why proceedings under the Contempt of Court Act should not be initiated against them for violating the directives. They were asked to submit their reply before 8 January 2001. Earlier in 1993, the Court had directed the Collectors and RDOs to restore the alienated lands of tribals in cases where no appeals against the RDOs orders restoring land were pending and no compensation was payable. The directives were issued under the Kerala Scheduled Tribes (Restriction on Transfer of Lands and Restoration of Alienated Lands) Act 1975 on a petition filed by Dr. Thera to implement the Act whereby all alienated lands since 1960 were to be restored.

The High Court, where a case has been pending since 1988 for implementation of the 1975 Act, had come down heavily against the Government of Kerala for "lack of will" in implementing the 1975 Act but has repeatedly agreed to the Government's request for an extension of the deadline. As the government failed to implement it, he moved a contempt of court petition.

On 16 December 1999, the Division Bench consisting of Justice P.K. Balasubramaniam and Justice C.S. Rajan, hearing the contempt petition filed gave the ruling that the Government of Kerala had committed contempt of court and gave another five months to implement the 1975 Act. The Government was warned that if it failed to carry out the restoration of land to the Adivasis for which no compensation was payable and in which no appeals were pending within five months, the Chief Secretary would be punishable. The Bench also said that the 1999 Act could not override the 1975 Act that a contempt charge was "liable to be framed against" the Chief Secretary. The Bench had then observed that the contempt proceedings could not be dropped due to the mere fact that a new Act - the Kerala (Restriction on Transfer by and Restoration of Lands to Scheduled Tribes) Act 1999 (See *The Indigenous World* 1998-99) - had been passed repealing the 1975 Act and where alternate lands were promised instead of the original lands. In addition, the High Court had itself stayed the contentious provisions regarding alternate lands. Meanwhile on 7 October, the Government began distributing 225 acres of land to the 76 tribal families and another approximately 1,200 acres to nearly 400 tribal families in Attapady in Palakkad district. These lands are surplus lands, barren, uninhabitable and uncultivable. On 11 October 1999, the High Court issued an interim stay of operation of sections 5 and 6 of the 1999 Act, which permitted alternate land to be given instead of restoration of alienated lands. The Bench had given the government another opportunity to implement the directives. However, the Government appealed to the Supreme Court and a stay on the contempt proceedings was granted on 7 February 2000. Thereafter, the High Court Bench had disposed of the writ by a judgement on 24 August 2000, which struck down as unconstitutional Sections 5(1), 5(2) and 22 (discriminatory provisions against the tribals) of the 1999 Act.

Thus the 1999 order on the framing of contempt charges became final. The government has been granted more time for replying to the charges. Predictably, the Government of Kerala has now challenged both the High Court judgement overruling the anti-Adivasi clauses of the 1999 Act as well as the contempt of court charge in the Supreme Court.

Since the passing of the Act in 1975, only 5,445,602 hectares of the total claim for 99,094,522 hectares have been restored. Along with the struggles, the legal battle continues to drag on, with people naturally losing faith in the judiciary. The Adivasi leaders have once again begun the process of re-launching their struggle and this time they are organising the support of Dalit organisations.

Unwed Mothers - the Price of Development?

The women of Kerala in particular enjoy a higher social status than women elsewhere in the country. This is attributed in part to the matrilineal tradition. Adivasi women traditionally enjoyed a prominent position in their community. However, their experience - the increasing trauma they face - once again presents an entirely contrasting modern reality. The colonisation of Adivasi territory and consequent breakdown of the traditional self-governing system, along with enticement, cheating, rape and extreme poverty are the causes. Wayanad as well as Attapady have become the focal points of protest on the issue of atrocities against Adivasi women. They have also become infamous for what has come to be popularly referred to as "unwed mothers".

Attapady, with its 25,000 Adivasis in 174 hamlets, is second to Wayanad in terms of Adivasi population in the state. "Namu", an organisation of Adivasis in Attapady, in a recent survey identified 378 "unwed" mothers, most of whom are in the age group of 18 to 25 in just 52 hamlets. Way back in 1988, the Assembly Committee for Scheduled Caste/Scheduled Tribe Development was apprised of the problem. Although the then District Collector enquired about the allegation, no action was taken. Again in 1997, 25 cases were brought before the Assembly Committee but no action was forthcoming.

The estimate of unwed Adivasi mothers in Wayanad district ranges from 300 to 1000. In one year, 200 women were found missing in Wayanad alone, with about 20 of the sexually assaulted women committing suicide. Tragically, the total literacy campaign in Kerala, which mobilised the literate, primarily non-Adivasi youth to fan out to the villages, turned out to be another curse for many Adivasi women who fell prey to their sexual needs. Investigations in Thirunelly in Mananthavady Taluk of Wayanad show that many outsiders go there with false identities and marry the girls, stay for two or three years, supply them with children and leave the village as and when they like. The poor women become easy prey to sexual diseases. Sometimes money is promised or paid to hush up the matter. Another factor was the sexual assault of police camping in the area during anti-Naxalite (Marxist-Leninist revolutionary group) operations that started at the end of the 1960s.

The negligence and complicity of the police is an important factor contributing to the high degree of sexual exploitation of women, as the culprits know that they can get away with the crimes even if they are reported to the police - which in most cases does not happen - or even if the media make the incidents into sensational news. The women who approach the police station are softly advised or fiercely threatened to go home with their complaints. Cases are hushed up. Investigations are botched up to protect the culprits.

North East India

In 1991, 8.14 millions of India's 67.76 million tribals lived in the seven north eastern states. (Figures for 2001 are shortly to be published.) Most of these belong to six major Mongoloid groups. Some, like the Bodo, inhabit the plains but most live in the hills. Certain areas fall under the Sixth Schedule of the Constitution, which recognises rights such as community ownership of land and forests, autonomous district councils and customary law. The region also has more than 4 million indigenous peoples from mainland India, most of them from Jharkhand brought by the British to work in tea gardens or as punishment for the anti-colonial rebellions. They are mostly illiterate, landless and powerless in the North East but are not included among the Scheduled Tribes for reservations in education or jobs. Some features of this region cause conflicts and lead to the violation of tribal rights. Most tribes are ethnically and culturally different from the mainland Indian population. The Sixth Schedule helps some of them to protect their identity, but even they are not protected from the tendency of an important section of the Indian leadership to impose a single culture on them. In addition, their economy is controlled by outsiders. That, combined with massive immigration, raises the spectre of unemployment and adds to their sense of being different. In response, many try to protect their identity by proclaiming their sovereignty. The official reaction is to treat these economic and political issues as a "law and order problem". Repression follows and atrocities are committed. The year 2000 witnessed both atrocities and attempts at peace-making.

The Naga Peace Initiative

The cease-fire signed with the NSCN (I-M) - one of the two main Naga groups - three years ago gave hope of a just and lasting peace since it came after 40 years of struggle including large-scale deployment of the Indian armed forces and the involvement of Burma. But the other major faction, the NSCN (K), was excluded from the cease-fire until April 2001. Many feel that, although some confrontation continues and the cease-fire has meant a cessation of hostilities between the two armies, civilian casualties have not declined but it has brought down violence considerably. (More on the recent developments in Nagalim, see chapter on Southeast Asia in this volume.)

The Bodo-Kachari

The Bodo in Western Assam and the Kachari, who are related to them, form a third of the three million tribals of Assam. One section of them demands sovereignty and the rest want an autonomous State within India. Until the arrival of the British, the Bodo were the dominant group throughout much of western Assam. But now they have been pushed into only two districts of the state. Even there they have to compete with others for land, among them immigrant Adivasi. The consequence has been severe killings, the best known being those of May 1996 when more than 500 were left dead on both sides and an estimated 300,000 homeless. There have been at least five incidents of stray killings in 2000.

The Bodo have two militant groups: the National Democratic Front of Bodoland, which began as the Bodo Security Force in the 1980s and became the NDFB in 1993, and the Bodo Liberation Tigers (BLT) formed in 1996 allegedly under the aegis of the Indian Government. It too has been waging a war whose cost has been high. In March 2000, a cease-fire was signed between the Government of India and the BLT. But despite public propaganda, one is not certain that it has been welcomed with the same enthusiasm as in Nagaland. There are no signs of the NDFB either being invited to it or joining it. Hence the struggle continues, with the accompanying atrocities.

The Kachari, their sister tribe - also known as the Dimasa - have their own armed group, the Dima Halam Daoga. Out of several encounters in 2000, the best known is that of 13th August when militants shot at the security forces in Taijungphang village. In retaliation, the Assam Police and the Assam Regiment attacked the village and raped two women at Dimaimur. Its *gaonbura* (village chief) was beaten up and killed. There was also large scale looting of jewellery and other valuables from Arulong village. After protests, Mr Tanu Singh, the District Collector, ordered an inquiry. Among other things, it revealed that after every raid the villagers are made to render free labour to the security forces for three days a week. His successor, Mr L. S. Changsang, has not taken any action on the report.

The Immigrant Issue

Immigrants also trouble the region. The biggest number come from Uttar Pradesh, Bihar and Jharkhand. Another important section is from Bangladesh. Most of the latter are Muslims, the former primarily Hindus. There is resentment against both. But official focus is on the latter. It gives the issue a religious colour. One wonders whether efforts are being made to divide the Bodo and others along religious lines. Another example is the controversy on whether the Bodos should accept Hindi or Roman script. Their literary convention held during the summer of 2000 accepted the Hindi script. Although the division is not a religious one, it is being presented as a Christian-Hindu divide. There are fears that the killings too will erupt along religious lines.

The Karbi in Karbi Anglong, Assam, bordering on Nagaland, are another tribe resisting all immigration, not merely that of Bangladeshis. About 70 persons, both immigrants and Karbi, were killed in their region between June and August 2000. The immigrants killed were mostly Bihari and Nepali.

The immigrant question is much more severe in Tripura, where the tribals were over 70% of the population at the beginning of the 20th century, 56% in 1951 and only around 28% today because of heavy immigration from Bangladesh. However, they are rarely referred to as immigrants because most are Hindus. The tribals have been resisting them and have formed a militant group, the National Liberation Front of Tripura. The media accuse them of being inspired by missionaries. Christians, however, form less than 2% of the State's population, and around 5% of the indigenous people. During 2000, the Bengalis formed a counter grouping. There have been several killings, and violence can be expected to continue.

The Manipur Massacre

A third of the population of Manipur is tribal, predominantly Naga but including others like the Kuki. The Naga-Kuki conflict has drawn the media's attention for many years. The Kuki are allegedly armed by the Indian army. The struggle was primarily for control of land and the border trade with Burma. The issue seems to have been decided and today there is relative peace. But Manipur is estimated to have 18 militant outfits belonging to different ethnic groups. So conflicts and atrocities continue. One example was the massacre on 28th December 2000, during which eight men in Tabanglong, a Naga village on the Tamenglong-Imphal Highway, were killed. The fact-finding team found out that a patrol party of 15 Jat Regiment was attacked by suspected militants at around 7 a.m. on 28th December

2000, about 200 metres from the bus stand of Tabanglong village. One soldier was killed and four were injured. At 11 a.m. the same day, personnel of the 15 Jat Regiment came to Tabanglong. When they reached the village, there were only ten men there and two Meitei chilli traders, who were hiding in the village after having heard the gunfire. The army forced the men to gather at the volleyball court and beat them up. Then, forcing five of them to lie face down on the volleyball court, the soldiers opened fire and killed them. One man survived with a bullet wound. Two men were made to sit near a memorial stone and shot dead. A mentally retarded young man and another man were forced to sit at the road near the church and were shot at. Fortunately, the latter escaped by jumping down and running to the bushes nearby. Before and during the killings, women and children were kept in different houses and not allowed to come out. After the killings, the army took the women and children to the church and detained them for the rest of the day. At dusk, a police team came to the church and asked women and children about the incident and the identities of the dead. That was the first they had heard of the deaths. The villagers were then asked to accompany the police to locate the dead bodies and identify their family members.

All those killed by the army were aged persons, innocent villagers, chilli traders and a young mentally retarded person. There was no sign of an encounter at the village. So it was a one-sided assault by the army, 4 to 5 hours after the attack on the army by suspected armed militants. Neither the army nor the police recovered any incriminating documents, arms or ammunition from Tabanglong at the time of the incident.

Sources

Meeting held on July 4th 2000 at the Centre for Ecological Sciences, Bangalore
Kothari, Ashish 2000. An Exercise in Conservation. *Frontline*, Feb 2, 2001
World Rainforest Movement. *Bulletin* N° 38, September 2000
Newsletter, Issue 3 September 2000.
Contributions by Xavier Dias
Contributions by Bela
Contributions by Stan Swamy

On North East India:

Anon., N. D. *Peace Initiatives among the Nagas.*

Dubey, Amaresh and Shubhashis Gangopadhyay. 1998. "Turbulent Intelligence", *The Telegraph*, March 23.

Fernandes, Walter. 1999. "Conflict in North-East: A Historical Perspective", *Economic and Political Weekly*, 34 (n. 51, Dec. 18-24), pp. 3579-3582.

Datta Ray, B. et al. (eds). *Population, Poverty and Environment in North East India.* New Delhi: Concept Publishing Company.

Hazarika, Sanjoy. 1994. *Strangers of the Mist: Tales of War and Peace from India's North East.* Viking Penguin Books.

Mukerjee, Sanu et al. (eds). *Demographic Profile of North-East India.* New Delhi: Omsons Publications, pp. 1-7.

Pakem, D. (ed). *Insurgency in Northeast India.* New Delhi: Omsons Publications.

Report of the Joint Fact Finding Team on Tabanglong Massacre on 28th December 2000.

SRI LANKA

Wanniyala-Aetto Women Being Trafficked to Arab Oil Countries

The hunter/gatherer Wanniyala-Aetto people survived the Sinhalese, Tamil, Portuguese, Dutch and English colonizations by withdrawing into the *wanni,* the Dry Zone Tropical Forest. The most critical impact on their lives, however, is more recent. In 1983, they were moved from the forest to make way for a national park. Their traditional hunter/gatherer means of subsistence became prohibited. They were detained if they crossed the national park border. The park guards even killed some of them. The government placed the forest people in "System C" rehabilitation villages in a development area. With their forestland taken away from them and their way of life prohibited, their women are now being sold as laborers to other continents. Those targeted are mainly young women, the few (approximately only 380 women) of reproductive age on whom the survival of the Wanniyala-Aetto ultimately depends. The Wanniyala-Aetto are ill prepared to deal with this new threat. None of their myths, legends or narratives tells of trafficking, sexual abuse or the brothels the women contract laborers may end up in.

The first seven Wanniyala-Aetto women contract workers were delivered to their employers' houses at the beginning of February 2001. The girls were dispersed to different cities. The local recruiter is a Sinhalese daughter of an alcoholic shopkeeper from the area. She receives 7,000 Rupees (a little less than US$80) per woman. This is a considerable sum in Sri Lanka (compare this with a government school teacher's salary of 6,000 Rs.). The shopkeeper's daughter believes the job descriptions presented by the agents from the capital. The future of the girls in a society in disintegration seems unpromising compared to life in Kuwait, Bahrain, Riyadh or Dubai. Signing the two-year or, alternatively, five-year contract as a housemaid would allow them to wear silk saris with gold embroi-

Young mother and son cooking in an ordinary Wanniyala-Aetto home environment. Photos: Wiveca Stegeborn

BEST COPY AVAILABLE

dery, many gold bangles and jeweled necklaces every day - a tempting alternative for a girl from a government Rehabilitation Village.

Once the local recruiter has a group of five to six women, a minibus arrives to take them from their forest homes to the capital. The first minibus arrived at the village without prior notice at eleven o'clock at night. The girls had to depart instantaneously. Seven hours later they arrived in Colombo, the capital. There they had to wait for another vehicle that took them the last kilometer to a private house where the agents evaluate their human merchandise. This takes three to five days. No-one has yet had the chance to tell what happens inside.

According to Supreme Court Attorney, Mr. Tampoe, in Sri Lanka the exploitation, both sexual and labor, of women contract workers has been ongoing for many years. Their work is a "cornerstone" (Tampoe 2001a) of Sri Lanka's economy, he says and continues: "Women's Groups (private) have been crying out for reform of the system for decades" (Tampoe 2001 b). It is difficult, he says, to achieve statistical data on the illicit trade. Some documentation, however, has been retrieved that exposes the involvement of the Sri Lankan government. Insurance papers stamped with the seal of the Bureau of Foreign Employment (BFE) disclose "Recruitment Fees" of 5,000 Rupees per person to the same Bureau. Prior to employment, the young women are asked to sign a contract from a Recruiting Office in Saudi Arabia. They are signed with finger prints added with the written names in Roman orthography. The contract is written in poor English with an Arabic heading. The Wanniyala-Aetto cannot read or write in either English or Arabic. Quoting the last sentence:

> *I hereby Agreed to Pay Rs 35,000:- for my Visa Charges, ticket and other relavant Expenses, also I have agreed not to Refuse for Working under any Circumstances and will bear total expenses if I do so* (Sahman Recruiting Office 1999 [spelling mistakes in original doc.]).

Birth Control

Although the transactions appear arbitrary and sudden, they are well prepared. As soon as the girls are listed, they have to seek, *at their own initiative*, a hospital in Colombo to give them a physical health check and for a consultation with "Family Planning". "Family Planning" in India and Sri Lanka most commonly means sterilization. Nonetheless, today there are alternatives such as a hormone injection lasting five years or an artificial ampoule subcutaneously inserted into their upper arm. The ampoules emit hormones daily over five years to prevent pregnancy. The reason for this "voluntary" action is said to prevent pregnancy when the girls come home on vacations.

From Cooking Fire to Microwave

Once the girls are dispersed to Africa or the Arabian peninsula, they cannot flee nor tell anyone at home where they are. Many cannot write in Sinhalese orthography, much less in other forms of writing. Even if women from the tropical monsoon forest become housemaids and nothing else, there are severe obstacles to their training. The Wanniyala-Aetto speak an almost extinct language that few outsiders understand in their own country, much less anyone in the Middle East. They can understand Sinhalese, as long as it is simple. The training and transmittance of household knowledge is problematic since the Wanniyala-Aetto women are brought up under very different living conditions. They cook on an open fire and collect food from the forest or their swidden fields. Compared to societies scoring the highest GNPs in the world, the transformation, albeit voluntary, must be hard. According to the Foreign Employment Bureau in Sri Lanka, some Sri Lankan women in the Middle East have been "subjected to harassment because they were not familiar with the work expected of them and lack training" (A. M. J. Perera, 2001).

An Investigation

The government of Sri Lanka was contacted through the Sri Lanka Embassy in Sweden at the beginning of February. Attached were the names of two recruiters, and the address of the travel agency used at the first delivery. The Sri Lanka Embassy replied with silence. The contact was renewed and an austere answer received that the matter had been forwarded to the Ministry of Foreign Affairs in Sri Lanka, which would conduct an investigation.

Meanwhile, Human Rights workers are investigating airlines with destinations in the Middle East, the Bureau of Foreign Employment and the Office of Emigration. What they are trying to establish is whether the travel documents and the passports are legal. The Superintendent of Police and the Director of the Children and Women's Bureau, Ms. P. Diwakara, when asked about the police's possibility of detecting Wanniyala-Aetto women at the airport, replied that there were several incidents pointing towards forged documents and illegal trade (Pers. com. to Mr. M. Cardillo Feb. 20, 2001).

An Awareness Raising Campaign

The International Movement Against all Forms of Discrimination and Racism (IMADR), an NGO in Sri Lanka that works against women's exploitation abroad, has agreed to organise an awareness raising campaign in Mahaiyangana, the closest town to the Wanniyala-Aetto settlements. Visiting the town instead of the villages helps spread awareness on a broader level. By having the meeting there, the IMADR experience will reach local recruiters, the transporters of the indigenous women to the capital, hospital personnel, the local police and, not least, the Wanniyala-Aetto women themselves, who are being informed about the event. Once advice has been broadcast, a follow-up visit is planned for Dambana, the largest Wanniyala-Aetto village. Families that have lost their daughters can then ask for help in tracing them.

Meanwhile, unaware that the Golden Days may soon end, the female recruiter continues going from door to door in the Wanniyala-Aetto settlements. A new list is growing. This time even the granddaughter of the late legendary chief Uru Warige Tissahamy is awaiting the night-time vehicle.

References

Cardillo, Maurizio. 2001. February 20. E-mail in author's possession

Perera, A. M. J. 2001. February 7. "Lankan maids suffer abuse in Gulf." In *Hindustan Times*.
http://www.hindustantimes.com/nonfram/080201/detFOR13.asp

Sahman Recruiting Office. 1999. July 21. Contract from Saudi Arabia. Document in author's possession

Tampoe, Arun. 2001a. April 3. E-mail. Document in author's possession
2001b. April 4. E-mail. Document in author's possession

EAST AND SOUTHEAST ASIA

BEST COPY AVAILABLE

EAST AND SOUTHEAST ASIA

JAPAN

The Establishment of a Human Rights Victims Relief Agency and the Recognition of the Ainu People

The Japanese Ministry of Justice is currently preparing for the possible establishment of a human rights victims relief agency - which will be independent from the government - by setting up an advisory body, the so-called Round Table for Human Rights Promotion. The government has recognized that it is necessary to study the feasibility of establishing measures for the relief of the victims of human rights violations. According to the inquiry, two reasons were given for the establishment of the new agency:

The first is the realization by the ministry that, "there exist human rights violations such as irrational discrimination based on social status, family origin, race, belief, sex or so on even today." This reflects the actual fact that the existing system of the Civil Liberties Commissioners has not worked effectively to end discriminatory incidents.

The second reason given for the establishment of the agency is that, "various new factors have appeared, along with the development of a more internationalized, high aged, and information-oriented society." This can be understood as referring to the fact that, due to the Japanese society's inability to adjust itself to changes, new social problems have developed such as those connected to the rapid increase of foreigners staying in Japan, or the circulation of slander and discriminatory information like the List of Buraku Communities via the Internet. In addition, it can be said that Japan's government is afraid to be isolated from international community if it fails to create the legal systems needed to address human rights violations.

As stated by the Ministry, "Japan's government has implemented various arrangements such as ratifying several international covenants as a member of the international community." The government has ratified the International Covenant on Economic, Social and Cultural Rights (1979), the International Covenant on Civil and Political Rights (1979), the Convention on the Elimination of All Forms of Discrimination Against Women (1985), the Convention on the Rights of the Child (1994), and the International Convention on the Elimination of All Forms of Racial Discrimination (1996).

BEST COPY AVAILABLE

In response to the Convention on the Elimination of All Forms of Discrimination Against Women, the Law on Equal Employment Opportunity and Law on Prevention of Sexual Harassment, and in response to the International Convention on the Elimination of All Forms of Racial Discrimination the Ainu Culture Promotion Law were enacted. However, these laws were passed mainly to maintain the government's international image and, due to lack of domestic grass roots discussion and consultation within Japanese society, violations of those laws have continued.

Civil Liberties Commissioners, who are nominated by local assemblies, have the responsibility of responding to discriminatory incidents. The commissioners have, however, no power to investigate or make recommendations in response to a discriminatory incident without the voluntary cooperation of all parties involved. Rulings by the commissioners have no force under the law. In the 1999 survey on the situation of the Ainu people, the number of people reporting discriminatory incidents actually increased. The obsolescence of this system has been pointed out ever since its beginning.

Furthermore, the United Nations has stressed the necessity for an independent human rights agency because of increasing human rights violations in the government immigration offices, jails, and even among the police. It is highly appreciated that the Ministry of Justice made the decision to establish a new agency for human rights victims. However, many concerns have been expressed as to what kind of agency it will be and what powers it will have:

Firstly, a Human Rights Committee, which will accept complaints from victims and make decisions on recommendations, orders, or surveys, will be established only in Tokyo, not in the regions.

Secondly, it is not certain that the Human Rights Committee will include members from the victimized sectors.

Thirdly, the mandate of the Human Rights Committee has not yet been clearly defined, although the Committee needs to have strong enough powers to investigate internal governmental discrimination related to public power, for example, related to the police or immigration offices.

As for the Ainu people, the Round Table for Human Rights Promotion, like all government agencies, uses the Japanese term "Ainu no hitobito" (people of Ainu descent), avoiding the term "the Ainu people". In short, they are taking the position of not recognizing the existence of the Ainu as an indigenous people. Even though they have included people of Ainu descent as a category of victims of human rights violations, they have not addressed the roots of these violations as racial discrimination.

Now, the Ainu people have to examine cases of discrimination to find what this discrimination is based on, and what forms of discrimination they suffer. It is necessary to accurately analyze the discriminatory consciousness, which has been socially and historically formed, by which people see the conquered people as being "backward", "inferior", and "better to be assimilated". It is impossible to appropriately respond to the discrimination of the Ainu people if it is not recognized that this form of discrimination is a discrimination of a conquered indigenous people. As long as the government maintains this deceitful approach to ethnic groups like the Ainu of Hokkaido or the Ryukyu people of Okinawa, the response to discriminatory incidents will be far from adequate.

The Japanese government has already submitted the first and second report to the Committee on the Elimination of Racial Discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination, and the report was considered in March of this year. The government has shown its duplicity in using different terms for the Ainu in the Japanese and English versions of the reports. All Japanese versions use the term "Ainu no hitobito", by which the Ainu are not recognized as a distinct people. In the earlier English reports, the government showed its uncertainty by using the term "the people of Ainu", which has a very unclear meaning.

In response to international pressure, the government now uses the term "the Ainu people" in the English version. However, the Japanese version still retains "Ainu no hitobito". In spite of the change of terminology in English reports, the refusal of the government to use "Ainu minzoku" (Ainu people) clearly shows its lack of political will to recognize the Ainu as an indigenous ethnic group, and thus to accept Ainu collective rights and self-determination.

The enactment of the so-called "Ainu Culture Promotion Law" in 1997 must also largely be seen as an attempt on the part of the Japanese government to maintain a positive image in the international community. The law is, however, very vague in its definition of Ainu culture. According to the government's concept, "culture" encompasses only aspects such as language, ceremonies or crafts, and does not include world view or lifestyles of indigenous peoples.

One positive aspect of the new law has been an increase in activities related to Ainu culture and a new awareness in Hokkaido of the Ainu as a distinct people with a unique and valued culture, despite its expression being limited to cultural activities and research. At a recent public hearing held in Sapporo by the Round Table for Human Rights Promotion, representatives from various NGOs representing discriminated groups came together to testify on the situation of discrimination in their areas. It is hoped that these groups, in a joint effort, will be able to pressure the Japanese government into making the proposed human rights relief agency an effective tool for safeguarding human rights in Japan.

CHINA

China's "Go West" Campaign

During the last two years, the Chinese government has introduced a strategic shift in the country's development. This strategy, which is termed "The great opening of the western regions" (*Xibu da kaifa*), or "Go West" for short, is of vital concern to many of China's minority peoples. However, their voice is hardly heard among the clamour emanating from the different interest groups that push for a development of China's western regions.

Historically speaking, China has oscillated between being predominantly land-oriented and sea-oriented. The opening up of the Silk Road more than two thousand years ago was followed by a prolonged period of developing maritime relations with Southeast Asia, before the grand Tang dynasty (618-907) once more redirected the country's main orientation towards the interior. This does not, however, mean that the Tang was inward-looking. On the contrary, it was China's first and only truly cosmopolitan period, and openminded Chinese today appreciate the Tang period as precisely that. The Song and Yuan periods - the last one ruled by the Mongols - were once again rather sea-oriented. Then came the Ming (1378-1644) and the Qing (1644-1912), which were largely land-oriented. The notable exception was the spectacular Chinese expeditions into the South China Sea and the Indian Ocean all the way to the Arabian Peninsula and the East African Coast in the early fifteenth century. The commander of these expeditions, Zheng He, was a Muslim from Yunnan in south-western China.

Starting in the mid-nineteenth century, China once more became sea-oriented, but this time the condition was forced upon the ailing empire by the contending Western colonial powers and later also by Japan. During the period of the People's Republic, one may also say that China has changed orientation. In the first part of the period, the country "leaned" towards Russia, whereas the last twenty years have seen a continued orientation towards the sea, a shift that was initiated by the Chinese government itself, and not forced upon them, like in the 19th century. The present shift in strategy may not be seen as a dramatic shift in orientation in the sense that China is once more in the process of turning its back on the sea. Rather, it may be seen as an effort *to do both at the same time.*

However, there are wider implications that go beyond China's borders, namely the closer relations that have developed during the last ten years between China and four states that have common borders with China in Central Asia, namely Russia, Kazakhstan, Kyrgyzstan and Tajikistan, the so-called "Shanghai Five", so named after their first conference in Shanghai some years back. The situation in these regions is different from what it was back in the Soviet days, because the ruling elites in these countries all face ethnic unrest in their respective countries. These elites have therefore developed a common interest in quelling ethnic tensions, which in many cases would involve cross-border activities.

Furthermore, the improved relations between China and Russia, which have been characterized by the partners as a "strategic relationship", may contribute to pulling China once more towards a more continental orientation. But it remains to be seen to what extent this is based on real intentions and how much of it is based on tactical considerations in the global game between these two powers and the US. At any rate, it may just as easily contribute to pulling Russia towards China and not the other way around, which has been the established pattern.

The region which is considered to be a part of China's West is huge indeed. It covers ten of China's provinces and autonomous regions. In the north-west, we have Shaanxi, parts of Inner Mongolia, Gansu, Ningxia, Qinghai and Xinjiang, and in the south-west, we have Sichuan, Guizhou, Yunnan and Tibet. Some would also add the southern province of Guangxi. This region covers more than half of China's territory with a population of more than 300 million. It accounts for most of the country's mineral and oil reserves and is of great strategic importance, since it comprises most of China's border regions. Finally, it comprises almost all of China's minority regions, including all the five province-level autonomous regions: Xinjiang (Uighur, Hui, Kazakh, Kirgiz, etc.), Ningxia (Hui), Inner Mongolia (Mongols), Tibet (Tibetans) and Guangxi (Zhuang, etc.)

There has been a rush among the leading strata of these provinces to get their share of the public investments that are pouring into the region. Some are afraid that most of the resources will be tied up in the populous Han Chinese provinces like Sichuan and Shaanxi. Others are afraid that it will be no more than another chance for bureaucrats to enrich themselves through corruption, but the deciding point is that in most cases, it is the local Han Chinese who have a say in these matters, and not the indigenous peoples.

And the stakes are great indeed. The present phase is characterized by infrastructure projects, like a pipeline linking Xinjiang's natural gas fields to Shanghai. The railway from Ürümqi to Kashgar in Xjinjiang, which runs 1000 km, was completed in 1999, and a new railway running from Golmund in Qinghai to Lhasa is under construction. This will be the highest railway in the world, with a total length of about 1100 km.

A new road has been constructed running roughly north-south through the vast Taklamakan desert in Xinjiang and, from the Xinjiang capital Ürümqi, a new four-lane highway is under construction westwards towards Kazakstan, financed by the World Bank. The biggest engineering project takes place in the north-eastern part of Xinjiang, where water from the river Ertix is harnessed and redirected to supply water to hubs like Ürümqi and Karamay.

The Chinese authorities may thus have good reasons to develop these vast regions, in order to make their riches more accessible and to secure a more balanced development between the richer coastal provinces and China's vast hinterland. The ideological rationale for such a move is expressed in two typical Chinese catchwords. The first one is "the two no-leaving-each-other" (*Liangge libukai*), which simply means that the Han Chinese cannot do without the minority peoples, and the minority peoples cannot do without the Han Chinese. Mao Zedong himself, in his time, gave a more forthright version of the same idea when he said that the merits of the Han Chinese are their large population and skills, and the merits of the minority peoples are their large land and extensive resources.

The second catchword for the "Go West" campaign stems from Deng Xiaoping's thinking about the way China should develop, and is called "the two big general prospects" (*Liangge da ju*). The first one of these prospects refers to the Dengist strategy of letting the coastal regions go ahead and enrich themselves, and that these regions in turn should support the interior regions to do the same. This plan, which the central authorities are now trying to implement, is considered, in the words of party leader Jiang Zemin, as "a revitalization of the Chinese people".

However, besides this compulsory traditional sloganeering, the issue is mostly discussed in contexts that are void of ideological trappings. It has first and foremost kindled a kind of Chinese "pioneer" spirit, which plays on the traditional Chinese image of these western regions as inhospitable and forbidding while at the same time presenting them as the lands of golden opportunities. It is characteristic that the term "development" (*fazhan*) is not applied in this connection but rather the term "opening up" (*kaifa*). The Chinese press has discussed what one can learn from developments in other countries that are considered to be similar, like the Russian expansion into Siberia and the American westward expansion in the nineteenth century (sic).

The crucial point is that the minority peoples are hardly mentioned and hardly audible in this clamour for opening up of the west. A few voices of concern have been raised, for example, that the legal rights of the minority peoples in these regions have to be considered. But on the whole, the prospect of grand technological projects completely overshadows ethnic issues. The only area in which ethnic voices are heard is that of tourism and the prospect of presenting the minority regions as worthy caretakers of environmentally-friendly tourism. But for the rest, the plans seem to be drawn up to benefit the Hans both at the local and national level.

The thinking from the Han Chinese planners seems to be that development of the region will also contribute to developing the economies of the minority peoples. This aspect is certainly important because, if carried out well, it may result in tying an increasingly affluent political and economic elite among the minority peoples closer to these development plans. There has also been talk about making use of the Uighurs of Xinjiang, who are unsurpassed traders, as a pivotal developmental force in a regional Central Asian context.

There is no doubt that a campaign for developing China's western regions will lead to increased ethnic conflicts in the short run. The plans for opening up these regions are thus closely scrutinised by the regional military planners in Lanzhou in Gansu, which is the centre of the military command for the vast north-western regions.

In the last couple of years, there have been fewer armed clashes between Uighurs and Han Chinese, even if it seems clear that Uighurs have been given training for guerrilla warfare both among fundamentalist groups in Pakistan and among the Taleban in Afghanistan. The two incidents in Xinjiang that have aroused most concern recently are the arrest of the prominent Uighur woman, Rebiya Kadeer, and the death by torture of the political activist, Abduhelil Abdulmejit.

Kadeer, who is one of the *nouveau riche* among the Uighurs, was arrested in the spring of 2000 and sentenced to eight years in prison for allegedly revealing state secrets because she had mailed local newspapers to her husband, who is in exile in the United States. The arrest caused quite a stir, also among Uighur women in Kazakhstan and Kyrgyzstan, because Kadeer was known for her philanthropic projects and had served on high-level government commissions in Xinjiang. Abduhelil Abdulmejit was accused of being the brain behind the violent riot in Yili back in 1997 (see *The Indigenous World 1997-98*, pp. 187-88). On October 17, 2000, he died in prison as a result of torture by the Chinese police.

More recent reports claim that Moslem communities in Gansu, Ningxia and Shaanxi further east are getting more restive. The ethnic group in question is the Hui, who are often called "Chinese Moslems" due to the fact that they speak Chinese but are Moslems. Historically speaking, they are a result of intermarriage between Central Asian tradesmen and Chinese women. Their proximity to the Han Chinese regions has not made them more amenable to cultural assimilation. On the contrary, some of the most violent ethnic riots in China have originated in these areas, the last one in the 1930s, headed by the legendary Ma Zhongying.

Even the eastern province of Shandong has been the site of deadly clashes between Hui and Chinese police. In December 2000, the police fired at a crowd of about 2000 Hui demonstrators in the county centre, Yangxin, an incident that was reported in the Chinese press. Most of the Moslems involved were said to have come from Mengcun County in neighbouring Hebei province. The tensions had been building up after a Han shop owner in Yangxin advertised the sale of "Islamic pork", resulting in he and another Han being killed. Later, a pig's head was found hanging in front of the local mosque. The result of these incidents was that the communist party boss in Shandong, the head of the administration and the police chief of Yangxin County were sacked but many Moslems considered that the government should do more than just make these officials the scapegoats for the incidents.

TAIWAN

The Historical Ending of Indigenous Land?

The latest revision to the "Regulation on the Development and Management of Indigenous Reserve" was made at the end of the year 2000 by the Ministry of Internal Affairs. The revision again followed the theme of "the acquisition and development of indigenous reserve by non-indigenous people", and has now been sent to the Aboriginal Council for inquiry. On the key point deciding the future of indigenous reserve, we found exceptionally low concern regarding revision of the Regulation. This kind of abnormal silence might be a deliberate move on the part of those who stand to benefit from the revision.

The Regulation was first made in 1948. (It was then called "Regulation on the Development of the Mountainous Reserves in all Counties, Taiwan".) For the past 50 years, it has been revised six times. Every revision stressed that the reserve was to protect the livelihood of the indigenous population but it was actually through these revisions that the government failed to stop non-indigenous people from developing the mountain area, and sacrificed indigenous rights instead. Although the Regulation has formally insisted on the sole entitlement of the indigenous population to the reserve, there are numerous cases of illegal purchase of reserve land left unresolved. And we do not even know the exact number of cases according to official research. The six large-scale "clearances", which legitimized the illegal non-indigenous usufruct of reserve land, actually resulted in the indigenous peoples losing their land through the Regulation and government action.

From the very beginning, when the government claimed ownership of indigenous land, there was an assumption within the reserve policy that the government should take care of each and every indigenous individual. As a result, the reserve land became private property, and as such it was assumed that it would be cultivated in the best way possible, or used to its greatest efficiency. Such a biased perspective of efficiency under a system of privatized property underestimated the efficiency of sustainable development supported by a traditional system of land use, and ignored the cultural and societal benefit of the collective aspect of traditional indigenous land use. As a result of the government's "privatization policy", and due to the urgent need for cash, those who are entitled to the reserve often sell the land legally or illegally, and are left with nothing. Rather than securing the livelihood and the survival of the indigenous people, the "privatization" of the reserve policy, i.e. the entitlement of individual indigenous Taiwanese to reserve land, will ultimately cause the loss of a great deal of indigenous reserve land.

The "Regulation on the Development and Management of Indigenous Reserve Land" is a decree formed by means of Article 37 of the "Act on Conservation and Use of Mountainous Area" (the Act). The Act does clearly not incorporate the peculiarity of indigenous reserve land; Article 37 speaks only about the establishment of indigenous reserve land and the sole entitlement of the indigenous population to it. The right of the indigenous nations to collectively self-manage the reserve land and the obligation of the government to assist them in this is not included. Indigenous peoples have campaigned and demanded the revision of the Regulation or the enactment of separate legislation since the 1980s. On the other hand, the "Ping-quan-hui" (an interest group for the non-indigenous population inhabiting or investing in traditional indigenous areas), which has close connections to political powers and private enterprises, is also making an effort to have the Regulation revised or new legislation promulgated that would release the reserve from the sole entitlement of the indigenous peoples, "in order to promote the development of the area inhabited by indigenous people". Under such contention, the Ministry of Internal Affairs, the body in charge of the indigenous reserves, in fact began to draft the "Act on the Development and Management of Indigenous Reserve Land". In case Congress did not ratify the draft law rapidly, the Ministry also prepared a revision of the Regulation. From this draft revision of the Regulation, it is possible to understand the view of the Ministry in charge of the policy on indigenous reserve land, and one can therefore also get an idea of the possible direction of future legislation.

Article 15 & Article 18 of the Draft Revision of "Regulation on the Development and Management of Indigenous Reserve Land"

An important direction of the revision is to allow non-indigenous people to be entitled by inheritance. To prevent inconsistency between the Regulation and the Act, which it forms a part of and which legitimizes the validity of the Regulation, the Ministry of Internal Affairs at the same time proposes the revision of Article 37 of the Act. It is already questionable as to how a decree could decide the direction of legislation. The fact that the effort the Ministry made was in the interest of non-indigenous people is itself in contrast with existing law, and also inconsistent with the essence of the provisions governing reserve land as expressed in Article 3 of the Regulation, which states that the reserve land is to secure the livelihood of the indigenous population and is reserved for their use.

It might seem unreasonable or unfair to prohibit non-indigenous people from inheriting the reserve. However, the rationale is that indigenous land is embodied with social solidarity, and the distribution and use of commonly owned land is based on an individual's status within the nation he or she belongs to. Such connection between human beings and the land is more radical than the "common" ancestral heritage.

In the latest revision, the Ministry of Internal Affairs not only ignored the collective aspect of reserve land, but it also made no effort to put an end to the illegal purchase of reserve land. On the contrary, it tried to lift the barrier preventing non-indigenous people from being entitled to reserve land, which would make it easier for consortia and "Ping-quan-hui" to purchase indigenous reserve land.

Article 28-1 & Article 42-1 of the Draft Revision of "Regulation on the Development and Management of Indigenous Reserve Land"
In addition to the possibility that non-indigenous people could be legally entitled to indigenous reserve land, other articles are trying to legitimize the illegal transactions of the past. The "Investigation Program on the Use of Indigenous Reserve Resources 1995" in Article 28-1 of the revision is in fact the seventh "clearance", following the previous six, legitimizing even more illegal appropriations of indigenous reserve lands. The first two clauses of Article 28-1 indicate that: those who used the reserve illegally before the clearance could continue to use the land with a lease, and reserve used illegally after the clearance should be taken back by the government. The rhetoric is nothing new. In other words, all those illegal cultivators need not be too worried about the possibility of the land being "taken back" since the Ministry of Internal Affairs has always been indifferent to the offences, and there will always be another "clearance" to legitimize all the illegal transactions once there have been a certain number of further illegal appropriations.

Aftermath of the Earthquake

In recent years, it seems that disaster looms in indigenous areas whenever rains fall. Landslides, road collapses or mudflows have been common events. These disasters were usually connected to the so-called "921 earthquake" of September 1999. But it has become evident that not only natural forces have to be blamed but also the reckless and unrestricted profit-oriented mode of development. It reveals what the indigenous peoples have been forced to engage in for their economic survival, as well as the extent of cultivation in mountain areas by non-indigenous people, all in the name of the "development" of indigenous areas. Both sharply reflect the failure of the government to positively respond to the transitions taking place in indigenous societies.

After the earthquake, members of the indigenous peoples ranked, as usual, at the bottom of the priority list for rescue and rehabilitation. And the supplies often failed to cover the needs. The geographical and cultural distance between the indigenous peoples and the majority population left the latter either little concerned, or figuring out for themselves what the needs of the indigenous people could be. This has been the case no matter whether there was a disaster or not. Ironically, the autonomy of the tribes grew under such difficulties. The self-reconstruction of the Thao village of the Mihu community of Tayal is an example of the re-organization of indigenous social institutions that have been weakened over many decades. But the opportunity for indigenous tribes' autonomy to grow also carries with it potential dangers. The government still controls the usufruct of the land, the management of resources and development planning, and it is still ignorant of the increasingly destructive impact of the present mode of development in indigenous areas. The blueprint for its reconstruction efforts seems to be based on the principles of reconstruction to the "original style", which ultimately means to accommodate the needs of the majority. Instead of considering what kind of reconstruction the indigenous communities want, what is good for the economy of the tribe or what will help to solve their own problem, they are looking for "safer" spots to enjoy the scenery, building wider roads and thicker supporting walls, and trying to revive tourism to bring about economic growth.

The indigenous peoples fear that all the provisions of the "921 Earthquake Reconstruction Act" that are aimed at helping the earthquake area to recover, such as reduction in revenue, low-interest loans, simplified registration of real estate, simplified requirements for investigations on environmental effects, will ultimately help construction companies and enterprises who bear the same logic of "development" to gain easier entry to indigenous areas. Those budding movements in indigenous communities aimed at regaining more control over their affairs, of reconstructing the autonomy of the tribe, could be killed again if there is no special program to support them, if there are not enough funds, or if the legal requirements cannot be adjusted. The efforts of the tribes seeking autonomous development, to attract the urban migrant workers back to the communities, to solve the problem of unemployment, to become economically independent, and to recover their dignity may then not succeed.

PHILIPPINES

Constitutionality of Indigenous Peoples Rights Act Upheld

In its ruling of 28 November 2000, the Supreme Court of the Philippines upheld the Constitutionality of the IPRA by a 7 to 7 vote. The ruling of the Supreme Court on the Isagani-Cruz case had been anxiously awaited by indigenous organisations and their supporters. The case questioned the constitutionality of several provisions in the Indigenous Peoples Rights Act (IPRA), among them, and most important, the provision for communal ownership of land and resources (including sub-surface resources) on the part of indigenous peoples. It was argued that this provision violates the Regalian Doctrine, which established State ownership over public land and the resources therein (for a more detailed analysis of the arguments given, refer to the article "Constitutional Challenges on the Indigenous Rights Act" in *Philippine Natural Resources Law Journal* Vol. 10, No. 1, of June 2000).

It is considered that the decision, which was officially released on December 6, marks the first time in Asia that a national government has legally recognized indigenous peoples' territorial rights. However, although the battle may be won, the war is not yet over. The 7 to 7 vote of the Supreme Court was very close, and the petitioners submitted a Motion for Reconsideration. Since there was one vacancy in the SC, the new 15th judge appointed by ousted President Estrada shortly before he stepped down will determine the new majority. Holders of large vested interests (mostly in mining) behind the petition are putting heavy pressure on the end result.

National Commission on Indigenous Peoples Paralysed under Estrada

Throughout the time ex-President Estrada was in office, his administration showed a blatant lack of political will to implement the law. With reference to the pending court case, funds for the proper operation of the NCIP were withheld and the Secretary of the Department of Environment and Natural Resources (DENR) gave orders to stall the implementation of IPRA, meaning: not to sign any certificates of ancestral domain title (CADT).

The National Commission on Indigenous Peoples (NCIP), whose task it is to implement the IPRA, has therefore been virtually nonfunctioning ever since its creation. Furthermore, two other Indigenous Peoples "Task Forces" were created under Estrada and superimposed on the NCIP (the "Presidential Task Force on Ancestral Domains" in February 1999 and the "Presidential Task Force on Indigenous Peoples" in February 2000).

Like its predecessors, the NCIP was in danger of becoming a tool for protecting the interests of politicians and private enterprises rather than those of the indigenous peoples. Not a single ancestral

TAMA NA! SOBRA NA!
PALITAN NA!
OBSTRUCTION of JUSTICE

Mass demostrations against President Estrada in Baguio City, Cordilleras. Many indigenous of the Cordillera joined the countrywide mass protests that led to the ousting of Estrada in January 2001. Photos: Cordillera Peoples Alliance

BEST COPY AVAILABLE

domain title had been issued up to the time Estrada was ousted by the massive and peaceful popular protest that came to be known as "Peoples Power II" (in reference to the protests that forced Dictator Marcos out of office and country in 1986). While all of the 181 Ancestral Domain Claims had been left pending, the NCIP did issue 101 certifications to mining companies stating that the areas under certification were either not inhabited by indigenous peoples or outside any claims for ancestral domain/lands, even in the face of clear evidence that indigenous peoples lived in these areas.

After the ruling of the Supreme Court, the NCIP was put under pressure by NGOs and indigenous organisations to start issuing Certificates of Ancestral Domain Titles (CADTs) and, by the end of the term of its former chairman Dao-as on February 20 this year, a small number of CADTs had indeed been signed.

Commitment to IPRA Signalled by the New President Gloria Macapagal-Arroyo

There is reason to hope that the events will turn in favour of the IPRA under the newly installed president Gloria Macapagal-Arroyo. On February 20, 2001, President Arroyo signed Executive Order No. 1 creating the Office of the Presidential Adviser for Indigenous Peoples Affairs (OPAIPA) and appointed Ambassador Howard Dee as its head. Immediately after assuming his post, Dee organized a consultative forum on March 9 last, with representatives of indigenous peoples organizations, NGOs and Church groups, dealing with how to assist the government in fully implementing the Indigenous Peoples Rights Act. President Arroyo also appointed Edtami Mansayagan, a Manobo from Mindanao who has been involved in the indigenous movement for decades and who is known for his commitment and integrity, as Officer In Charge and Executive Director of NCIP pending the institutional and performance audit and appointment of its new commissioners.

During the forum, the participants reviewed and assessed the performance of the former officials of the NCIP and noted the public's negative perception of the organization. It criticised the selection process by which its officials and personnel were appointed and its failure to address and respond to issues affecting the indigenous peoples. It also stressed a number of issues that required government attention:

- A change in the government's position on the IPRA case at the Supreme Court to ensure a favourable ruling.

- A moratorium on the issuing of CADTs and CALTs and certification of free and prior informed consent (FPIC) pending review of its process.
- Stopping the practice of deputizing the security guards of business firms operating in ancestral domains as CAFGU or similar paramilitary units.
- A return of indigenous peoples displaced from their ancestral territories, such as the Quezon Manobo Tribes Association (QUEMTRAS).
- The creation of an Indigenous Peoples' Consultative Committee.
- The immediate release of the NCIP budget.

Cordillera Region

Mining

In June 2000, nine mining applications in the Cordillera, covering a total land area of 15,064 ha., were approved by the national government. These are located in the municipalities of Mankayan, Tuba and Itogon in Benguet Province, and Bucay and Licuan-Baay in Abra. The applications approved are those of Lepanto Consolidated Mining Company, Philex Mining Company, Crescent Mining and Development Company and Jobel Corporation, all registered as local companies. The mining areas applied for lie within the territories of the Tingguian, Kankanaey and Ibaloi indigenous peoples. The communities affected were never properly informed or consulted.

Another 126 mining applications in the Cordillera region are being processed for approval, covering a total land area of 711,965 ha. The Department of Environment and Natural Resources (DENR) said that they were fast-tracking the approval of these applications in order to encourage foreign investments in the country. Most of these applications are from multinational companies, such as Newmont based in the U.S., or Climax Arimco of Australia. Opposition in the areas covered by these applications remains firm.

Dams

Opposition to the San Roque Dam is becoming stronger with the formation of Timmawa, the Agno River Peasant Movement to Free the Agno River. Timmawa was launched on March 13 with more than 300 members from Itogon, Benguet, and San Manuel and San Nicolas of Pangasinan. This US$1.1 billion mega-dam project, funded by the Japanese Bank for International Cooperation (JBIC), is currently under construction and targeted to be completed by 2004. The continuing construction of this dam violates several laws, such as the Indigenous Peoples Rights Act, the Local Government Code and the Investment Code. JBIC has not fully released the loans because of the growing protest and since several legal requirements have yet to be met.

Aside from the San Roque Dam, two others are presently undergoing construction, the Agbulu Dam in Apayao and the Bakun Dam in Benguet. Foreign funding is furthermore being sought for two more mega-dam projects in the Cordillera: the Matuno Dam in Ifugao and the Palsuguan Dam in Abra. None of the mega-dam projects complied with the requirement for obtaining the free and informed prior consent of the affected indigenous peoples, as stipulated in the Indigenous Peoples Rights Act.

The New Administration

The leaders of the former "Erap Resign Movement" held a meeting with the new President Gloria Macapagal Arroyo on March 24, 2001. The CPA called the attention of the new president to the urgent issues of the Cordillera indigenous peoples in relation to the dams and mining projects in the region. The president promised that her administration would seek the consent of the indigenous peoples to projects implemented in the region.

Elections

Because of the success of the Peoples Power II in ousting the former President, there is now a strong movement among the indigenous peoples to participate in the local and national elections scheduled for May 2001. The CPA and its affiliate organizations are actively building alliances with progressive parties and candidates to hopefully influence the result of the elections towards a more democratic governance and legislation for the genuine recognition of indigenous peoples rights from local up to national level.

Death of Two Cordillera Indigenous Leaders

Mrs. Susan Longid, a member of the Regional Ecumenical Center in the Cordillera (RECCORD) and a member of the Regional Council of the Cordillera Peoples Alliance passed away on March 19. She was 55 years old and had been suffering from cancer. Mrs. Longid, a Bontoc from Bontoc town in Mountain Province, was at the forefront of the movement for the recognition and protection of indigenous peoples rights. She was one of the pioneers in developing educational modules on Cordillera issues and concerns during her time as Executive Director of the Cordillera Schools Group, a network of protestant schools in the Cordillera.

Mr. Eddie Daguitan, the Secretary-General of the Kalinga Chapter of the Cordillera Peoples Alliance also died of cancer on March 18, 2001. He was 42 years old. Eddie, a member of the Mangali Tribe of Kalinga was already an activist against the Chico Dams in the late seventies and became an organizer of indigenous students in Baguio. As an agriculturist, he was very much involved in the development of appropriate technology and socio-economic work for indigenous communities in Mountain Province and Kalinga.

The demise of Mother Susan Longid and Eddie Daguitan is a big loss for the Cordillera indigenous peoples' movement. Their lives will always be a source of inspiration and they will remain in the heart and struggle of the people.

Sources

MGB-DENR Certified List of Approved and Pending Mining Applications in the Cordillera Region

CPA press releases

Mindoro

Mining Permit in the Ancestral Domain of Mangyan on Mindoro Revoked

DENR Secretary, Heherson Alvarez, revoked the Mineral Production Sharing Agreement (MPSA) of Abglubang Mining Corporation on 11 April 2001.

On March 14, 1997, Mindex Resources Development, Inc., a Norwegian company engaged in exploration and development of mineral resources in Norway, Greenland, Ghana and Vietnam, was issued an exploration permit by the Mines and Geo-Sciences Bureau of DENR. The Mindex subsidiary in the Philippines is Aglubang Mining Corporation, which held a two-third share in the concession area. Mindex Resource Development was later renamed Crew Mineral Philippines (CMP) after Canadian investors bought into the company.

The MPSA acquired by Aglubang Mining Corp. (AMC) covered 9,720 hectares in Sablayan, Occidental Mindoro and Victoria, Oriental Mindoro for 25 years. The planned nickel mining project would have encroached upon the ancestral lands of the Samahan ng mga Nagkakaisang Mangyan Alangan (SANAMA) and Kapyan Agpaysarigan Mangyan Tadyawan of the Alangan and Tadyawan people. Both groups were awarded a certificate of ancestral domain claim by the DENR prior to the granting of the exploration permit.

The local government, church and civil society of Mindoro have opposed the mining project. At the forefront of the struggle were indigenous peoples' organizations, primarily the Kapulungan Para sa Lupaing Ninuno (KPLN), a provincial federation of Mangyan in Oriental Mindoro. The DENR found that there was sufficient grounds for revoking the MPSA of AMC, such as failure to obtain an environmental impact assessment (EIA) and prior approval from the relevant Local Government Units. It also noted that AMC had no "proven track record".

Palawan

Ancestral Domains Remain Unrecognised

Due to the NCIP's lack of implementation of the IPRA over the past years and the unsupportive attitude of local governments, especially in the Municipality of Rizal, the Ancestral Domains of the indigenous peoples of Palawan island remain unrecognised. The Palawan NGOs Network Inc. (PNNI) and other organizations are now trying to come up with alternative solutions to secure the indigenous peoples' rights to their Ancestral Domains by appealing to Republic Act No. 7611. This latter empowers the Palawan Council for Sustainable Development (PCSD) to govern, implement and give policy direction to the Strategic Environmental Plan for Palawan (SEP), and to provide for the recognition of tribal ancestral lands as a main component of the Environmentally Critical Areas Network (ECAN). Until now, the Palawan Special Committee on Tribal Ancestral Zones (PSCTAZ) has had very limited capacities and technical skills to perform tasks pertaining to the identification and delineation of tribal zones. In addition, there is very little communication between PSCTAZ and the DENR concerning the follow-up of pending CADC applications, such as those for the Pälawan communities of Rizal and the Batak of Tanabag. However, there is hope that pending CADC applications will be re-examined and processed through implementation of recent presidential Executive Order No.1 (see paragraph above).

During 2001, the zoning of Palawan according to the ECAN criteria has continued, and this represents a further threat to indigenous access and control over their territories. ECAN is the centrepiece strategy of the SEP law that places most of the province under controlled development. The areas covered by ECAN include three major components: Terrestrial, Coastal/Marine and Tribal Ancestral Lands. Some of these proposed zones (e.g. core zones) limit or exclude human access to natural resources, with predictable repercussions on indigenous livelihoods. ECAN zoning is now being completed for the whole province of Palawan without any form of coordination with the local indigenous communities. The result of the ECAN survey and related maps are expected to be presented to the Provincial government before or immediately after the national elections in May 2001.

Destruction of Natural Resources and Mining

During the year 2000, there was a resurgence of dynamite fishing, also in connection with the so-called "shark operations". Some of the fish that are generally used as bait for sharks cannot be easily captured by hook and line, and thus bombs are used to catch them. Gangs from Bancalaan, Mangsi and Balabac islands are not only directly involved in illegal fishing but also selling dynamite and cyanide to the local populations, especially in Rizal and Quezon municipalities. The relevant government agencies and military authorities are well aware of the situation but have no means (e.g. speed boats) to apprehend the illegal fishermen. Because of over-exploitation of marine resources, traditional fishing methods have become ineffective. As a result, indigenous peoples have been forced to refine their fishing technology, doubling the size of their nets, or even using dynamite.

Over the past year, threats from large-scale mining activities have increased exponentially. Surprisingly, the Palawan Council for Sustainable Development (PCSD) has endorsed the plan of Rio Tuba Nickel Mining Corp. (RTNMC) concerning the establishment of a nickel refinery, the establishment of a support hydrogen sulphide production plant and limestone quarrying operations. PCSD is a unique government body formed by Republic Act No. 7611 with a mandate to protect the environment within the province. In reality, indigenous interests are not represented on the council, whose members continue to entertain new mining applications. The risk posed by the Process Plant to the environment and local communities is very high. Local NGOs in Palawan are now requesting the assistance of international organizations to lobby the Philippine Government against the expansion of RTNMC in southern Palawan, and to stop all large-scale mining operations in Palawan.

Mindanao

New Cease Fire Between the Government and the MILF

Despite intermittent skirmishes and violations of the cease-fire forged on July 17, 1997 between the government and the Moro Islamic

Liberation Front (MILF), both parties decided to formally open peace talks on 25 October 1999. Four rounds of formal peace talks resulted in both sides agreeing to submit their formal position papers on the nine agenda items presented by the MILF. However, the military began a shooting war on 28 April 2000 for the purposes of clearing the Narciso Ramos Highway (a highway connecting Cotabato and Lanao del Sur) purportedly of MILF rebels who were setting up checkpoints. The war was pursued vigorously by the government despite calls for a cease-fire and a return to the negotiating table by groups such as the Catholic Bishops Conference of the Philippines, the Bishops-Businessmen's Conference or the Organization of Islamic Conference. Caught in between were the Lumad, the indigenous peoples of Mindanao. Thousands were forced to leave their homes and seek shelter in evacuation camps and elsewhere (see *The Indigenous World 1999-2000).* They have been left with no choice. Both of the opposing forces, the military and the Moro rebels suspect them to be supporters or sympathizers of their enemies. The Lumad communities living in the periphery of the Moro-controlled areas are accused by the military to be "spies" for the rebels and are receivers of the government's troop shelling and bombings. On the other hand, the rebels accuse the Lumads to be government's informers. Furthermore, the Lumad communities residing within the rebel-controlled areas are endlessly forced to pay "revolutionary contributions" and their young boys are recruited as fresh crop for the Moro guerilla.

Due to superior firepower and the use of aircraft, MILF camps fell one after the other. The MILF simply abandoned their camps. On 9 July 2000, the MILF main camp, Abubakre As-Siddque, fell to military hands. President Joseph E. Estrada himself raised the Philippine flag in a place considered holy by Muslims, it being the "capital" of their Islamic State and celebrated the "victory" with *lechon* (roasted pigs) and beer, a move that clearly demonstrated a lack of sensitivity to the religious feelings of Muslims. A few days later, a *jihad* (holy war) was declared by Chairman Hashim against the Philippine government and its armed forces.

In the midst of the government's "all-out-war" and the MILF's *jihad,* the government has announced a massive, 100 billion Peso (US$2.1 billion) relief and rehabilitation program. Some 600,000 refugees have to be returned and assisted by the government. The government also plans to rehabilitate damaged roads and bridges, buildings and mosques. However, refugees in many instances refused to return on account of the near daily ambuscades by the MILF on GRP positions.

During the turbulent times of the impeachment, the MILF decided to remain open to the peace process. The newly installed government of President Arroyo adopted and popularises "all-out-peace" in contrast to the former administration's "all-out-war" as the new policy of solving the conflict in Mindanao. The government halted all military operations against the Moro rebels as a gesture for the new peace negotiations. However, the government strongly declared not to give back all overtaken rebels camps.

To avoid sabotage, the government pushes backdoor negotiation with the Moro leaders. Last March 2001, the Presidential Adviser on Peace Process, Eduardo Ermita secretly met with the MILF representatives lead by Al Haj Murad, Vice-Chair for Military Affairs in Kuala Lumpur, Malaysia. They agreed to resume the thwarted peace negotiations. Moner Bajunaid, Chair of the MILF Technical panel and concurrently an independent senatorial candidate disclosed over a radio interview that MILF is consulting its constituencies all over Mindanao for the peace negotiation. However, the campaign for the 14 May 2001 national election has stalled the process on both sides.

EAST TIMOR

East Timor was a Portuguese colony for more than 400 years. In 1975, it was invaded by Indonesia. This was the start of a brutal and illegal occupation. In 1999, when Indonesia was temporarily weakened by a regional economic crisis, its government allowed a referendum in East Timor in order to determine the future of the territory. When the referendum took place in August 1999, an overwhelming majority voted for independence.

Pro-Indonesian militias, created and supported by the Indonesian military, tried to influence the outcome. In the months leading up to the referendum, independence supporters were harassed and intimidated. Several thousands were killed. When the result was announced, the militias and the Indonesian military went on a rampage, destroying property and killing more people.

In September 1999, an international military force (INTERFET) led by Australia arrived in East Timor and, in October, the last Indonesian soldiers left the territory. In February 2000, INTERFET was replaced by a regular UN peacekeeping force. Since 1999, East Timor has been administrated by UNTAET, the United Nations Transitional Administration in East Timor. Formal independence is expected to begin at the end of 2001 or the beginning of 2002. The country's official name will probably be Timor Loro Sa'e.

The people of East Timor are finally free. The Indonesian occupation is history but the future will not be easy. They face a number of serious problems, which they will have to solve to build their new nation.

Infrastructure and Economy

One problem is infrastructure. Many roads are in a poor condition, especially during the rainy season (November-March). In the coastal cities, harbours will need to be repaired and expanded so that the country can trade with the rest of the world.

A second problem is the economy. During the Indonesian occupation, all major economic assets were in the hands of Indonesian generals - the Suharto family and its cronies - who exploited East Timor for their personal profit. Now the East Timorese have to take control of these assets. Coffee is an important product but, during the year 2000, the international price of coffee dropped by 50 per cent, to the lowest level in the last 30 years. Wood was once an important product but too many trees have been cut down and there is a serious risk of deforestation.

The sea around East Timor is rich in fish but many fishing boats were destroyed by pro-Indonesian militias during the turbulent days of 1999. The East Timorese have to build a new fishing fleet. Traditionally, fishing was not a major activity in East Timor, as most people worked in agriculture. In the future this may well change.

Oil and natural gas can be found under the ocean bed between East Timor and Australia, in the area known as the Timor Gap. These natural resources will probably give the new nation a solid economic foundation. Australia, however, is reluctant to give up the rights it secured in a treaty concluded with Indonesia in 1989. The old treaty divides the revenue from energy taxes 50-50 between the two parties. Naturally, East Timor wants a larger share. The old treaty was illegal as Indonesia had no legal claim to East Timor and thus a new treaty is now being negotiated.

It is possible to develop tourism to a certain extent, but not until the infrastructure has been improved.

Education and Administration

A third problem is the education system. During the Indonesian occupation, everybody was forced to learn the Indonesian language

Bahasa Indonesia. This will not continue. There are several local languages in East Timor, but *tetum* is the *lingua franca*. Portuguese used to be the language of administration, and some people still speak it, mostly the older generation. The younger generation prefers English because it is the language of computers and of the internet. This does not, however, mean that they actually master this language. Because of recent history everybody knows *Bahasa Indonesia*, and this language will probably be used by many for a long time to come.

A fourth problem is a civilian administration. During the Indonesian occupation the territory was controlled by the military with a small civilian administration in a junior role. This will not continue. A new civilian administration will have to supervise infrastructure, the economy and the school system.

It will also have to deal with the problem of where the people are. Towards the end of the Indonesian occupation East Timor had about 800,000 inhabitants, of which some 100,000 lived in the capital Dili. Since Indonesia's departure, many people have moved from the countryside and the smaller towns to Dili. If this influx is not stopped, the capital will soon be full of poor and unemployed people. In a free country it is hardly possible to prohibit people from moving, so the new administration must make it attractive for people in the countryside or the smaller towns to stay where they are.

In September 1999, when the pro-Indonesian militias escaped across the border to West Timor, they forced some 200,000 people to go with them, and they all ended up in camps controlled by the militias or the Indonesian military. Since then, some of them have been allowed to return to East Timor but about 100,000 people are still living in camps in West Timor, waiting to return. Providing jobs, housing and education for 100,000 refugees (or hostages) will be a major task for the new administration.

Political System

A fifth problem is the political system. East Timor must have a constitution. In addition, it needs to elect a parliament and a president. It is widely expected that the constitution will be dominated by respect for human rights, democracy and respect for international law. The East Timorese know better than most people what may happen when these concepts are ignored and violated.

The first president of an independent East Timor will probably be Xanana Gusmao, who was the supreme commander of the armed resistance in the mountains (Falintil) until he was captured by the

Indonesians in 1992. The first foreign minister will probably be José Ramos-Horta, who represented the resistance movement in exile during the Indonesian occupation. Bishop Carlos Belo was an important figure in the humanitarian struggle against Indonesia but, being a man of the cloth, he is not likely to have political ambitions.

A new eight-member cabinet of the transitional government in East Timor was established on 15 July 2000. *Timor Link*, the newsletter of CIIR (Catholic Institute for International Relations), reported:

> *"The new body is regarded by both the United Nations Transitional Administration in East Timor (UNTAET) and the National Council of Timorese Resistance (CNRT) as a further step towards independence. With four East Timorese members, it is the first time that East Timorese leaders have participated as equal partners in the governance of their country."*[1]

Internal Divisions

In addition to the problems concerning institutions and organisations, the East Timorese also have to face the fact that they are divided among themselves. In the past, it was easy to unite against Indonesia. But now that Indonesia has left, they discover that they do not agree on everything.

There is a division between right and left-wing politics; between the old generation who lived under Portuguese colonialism and the young generation who knows only the Indonesian occupation; and maybe a division between the external group that went into exile and the internal group that remained in East Timor.

The role and influence of the Catholic Church may also be a source of conflict. During the occupation, many people turned to the Church because it was the only legal organisation that was not controlled by Indonesia, and this was a (relatively) safe way of expressing your opposition to the invader. Not all people who joined the church did so for purely religious reasons.

The same phenomenon could be seen in Poland during the Cold War, where many Poles joined the church to express their opposition to the communist government and Soviet influence. After the Cold War, however, many people came to see the Catholic Church as a reactionary force that demanded obedience and rejected divorce, birth control and abortion.

The Crimes of the Past

The Indonesian occupation of East Timor is history but the memories linger on. How to deal with the crimes against East Timor? In Latin America, several military dictatorships handed over power to civilian and democratic governments on the condition that the generals receive immunity from any criminal charges. They wanted to bury the past, and they were quite successful, at least until recently. For the victims, this approach was clearly unacceptable.

In South Africa, a Truth & Reconciliation Commission (TRC) was established to deal with the crimes committed during apartheid. The idea was that the truth should be told and thus make reconciliation possible. In South Africa, they did not want to use the Latin American approach where the past was buried and the criminals got away with murder. On the other hand, they also wished to avoid taking revenge. By taking revenge you merely produce new victims and the cycle of violence continues.

The South African approach has many advantages but it was also criticized. Some white people felt that it was a witch-hunt against them, while some non-white people felt that the TRC did not go far enough: the smaller fish became scapegoats while the bigger fish were allowed to escape. Those at the top in the system of apartheid were never touched.

With regard to East Timor, the superpowers never wanted a serious investigation of the past. The evidence would point not only to Suharto and his regime but also to the powers that supported him with money and arms.

East Timor cannot undertake an investigation by itself; Indonesia is not likely to do it. What is needed is an international investigation by the UN. The geographical scope should be not only East Timor and Indonesia but also the Western governments and private companies that supported the aggression against East Timor. The time frame should be not only the turbulent year of the referendum in 1999 but it should go all the way back to 1974 when the first plans for the invasion were being laid. Given the position of the superpowers, it is not very likely that the UN will ever undertake such a project in earnest.[2]

A Period of Transition

From 1999 to 2000, East Timor took a giant step from Indonesian occupation towards independence. At the moment, the former Portuguese colony is in a period of transition during which it is governed by the UN.[3] Although the UN administration was welcomed by many and is there to help, it may - paradoxically - be a problem in itself. One reason is the huge economic gap between the affluent UN personnel on the one hand and the poor people of East Timor on the other. A second reason is that the UN has been very slow to hand over management of local affairs to the East Timorese. The Scandinavian jurist, Christian Ranheim, who was a UN observer in East Timor before and after the August 1999 referendum, summarises the situation thus:

> *"While the process to convict the guilty ones continues, international organisations are being accused of conducting a new colonisation of East Timor. Some observers have even claimed that the people are worse off under international administration than during the Indonesian occupation.*
>
> *"The East Timorese live in extreme poverty, but they see international aid workers living in floating hotels with prices of US $200 per night, drinking beer and having a good time in the newly established beach club in Dili. The coffee they produce is no longer exported due to a lack of infrastructure. The people who were prepared to make a national effort to rebuild their own country now feel a despondency and apathy which may endanger the whole transition process."*[4]

Notes

[1] *Timor Link*, no. 50, August 2000. The transitional cabinet now has nine members: José Ramos-Horta was added as foreign minister in the autumn of 2000.

[2] *Timor Link*, no. 51, December 2000, contains a special supplement entitled "In search of justice: An international tribunal for East Timor".

[3] Damien Kingsbury, "East Timor at a cross-roads", *Jakarta Post*, 15 December 2000. Via internet. Se also James Traub, "Inventing East Timor", *Foreign Affairs*, July-August 2000, pp. 74-89.

[4] Christian Ranheim, "Øst-Timor: På vei mot selvstendighet", *Mennesker og rettigheter*, vol. 18, no. 3, 2000, pp. 231-240. Translated into English this is "East Timor on the road to independence". The title of the Norwegian journal is *Human Beings & Human Rights*.

East Timor on the Internet

East Timor Action Network / www.etan.org
East Timor Daily News / www.timor.com
Timor Aid / www.timoraid.org
Timor Today / www.easttimor.com

INDONESIA

Decentralization: New Autonomy Laws

With the overthrow of President Suharto in May 1998, the country's political structures and its centralist architecture were called into question. In the reform agenda with which the transition government of B. J. Habibie cast its lot, the devolution of political and fiscal powers from the center to the regions took a prominent place. Although the economy was in a shambles, some regions rich in natural resources demanded both a more equitable share of the profits from their exploitation as well as greater freedom to do with them as they pleased. Other regions asked for less central intervention in local politics. Most requested wider autonomy.

In an attempt to reverse this centralization, the Habibie government promulgated two new laws: Law 22/1999 on Regional Governance and Law 25/1999 on Fiscal Balance Between the State and the Regions. Law 22 decentralizes authority over all fields except foreign affairs, defence and security, justice, monetary and fiscal policy, religion and a number of broad economic issues. Significantly, it provides for the election of regional heads – provincial governors and district regents – who, during Suharto's time, had been appointed by the center. Law 25 gives regional governments more control over taxation and allows them to retain a substantial share of revenues produced in their realms. Provincial districts will now receive 80% of the income from most mining and forestry operations, 30% of earnings from natural gas and 15% from oil (if such resources relate to them). The laws became effective on January 1, 2001.

The implementation of Act No. 22/1999 and Act No. 25/1999 has drawn diverging perceptions in the eyes of the public. On the one hand, local governments and, indeed, a substantial proportion of citizens on the outlying islands, are excited about the promise of self-determination and self-government in terms of natural resource management, local governance, and investment planning contained in the laws (or, rather, the representation of their content in official discourse). It is widely recognized that centralized government, "New Order" style, has proven unsatisfactory in that it has failed to enhance people's living conditions economically, socio-politically or culturally. The concentration of political decision-making powers in Jakarta and the predatory economic relationship between the centre and the regions have generated disintegrative tendencies, especially with regard to provinces with rich natural resources who have received very little benefits in return, like some provinces in Sumatra (Aceh among them), East Kalimantan and West Papua (Irian Jaya).

Centralization has not only negatively impacted on the material aspects of people's lives but also created problems such as cultural disorientation among the peoples living on the outer islands. This disorientation has in turn fostered volatile relations between the different religious and ethnic communities that could be ignited at any time, with the result that violent "horizontal" conflicts (conflicts that are communal in nature) may explode all over the archipelago at ever shorter intervals. The empowerment of the districts and municipalities will go some way to quieting the discontent, at least of those local elites whose concerns can be answered by giving them a greater stake in the distribution of state revenues. Many locals, for their part, have been swayed by the rhetoric on "autonomy", clearly the buzzword of the year in official discourse.

On the other hand, for many people – critical academics and most NGOs among them – the two laws raised more questions than they answered. For them, firstly, the drafting process has taken place without proper consultation of the population in the regions. They criticize the schedule for implementation of the autonomy measures as being too tight, not allowing for proper awareness to be raised of the implications of "regional autonomy" among the general public in the regions. It would have been desirable, say the critics, to implement the process in a gradual way, starting by shifting some administrative powers to the provinces, followed by more financial powers.

Critics also caution, secondly, that while the law assigns far-reaching powers to the districts and municipalities, provincial governments are being bypassed, which will leave those movements unhappy that want to have more fundamental questions addressed, like the Acehnese and the West Papuans. Quite rightly so, activists in those regions suspect divide-and-rule tactics to be behind the laws' focus on sub-provincial entities, a suspicion fuelled in the case of West Papua by the plan decreed at the beginning of 2000 to carve up the province of West Papua into three separate provinces. Similar moves have been reported from Aceh where the central government suggested hiving off much of the centre, south and the west coast of the province, areas less affected by separatist activity, into a new province called "Galaksi", an abbreviation coined from its constituent parts. Clearly enough, these perennial flash-points in Outer Indonesia will most likely not find peace by tinkering around with administrative boundaries, while eschewing solutions based on addressing the basic grievances of large sectors of the local population. Special arrangements for Aceh and West Papua are said to be prepared but in the absence of an honest dialogue with the rebel movements active there (or, indeed, with any segment of civil society), "autonomy" is bound to remain a mere slogan.

A third concern is that while the laws give too little to independence-minded groups in resource-rich but politically oppressed regions, they are taking away too much from areas with little natural wealth and which have, in the past, indeed benefited from government subsidies to their provincial budgets. A study conducted by Bappenas (the National Development Planning Body) showed that some provinces would go bankrupt if the Acts were implemented as planned, based on the fact that so far 82 % of some provincial budgets has come from the central government, and the Acts maintain that provinces who are not self-supporting need to be liquidated or merged with other, more prosperous provinces. The Eastern Indonesian provinces of Nusa Tenggara Timur and Nusa Tenggara Barat, provinces with a predominantly indigenous population, are among the candidates for bankruptcy (as, by the way, are the Capital Region of Jakarta and the Special Region of Yogyakarta on Java).

Fourthly, and more generally, NGOs fear the vagaries of shifting responsibility for the provision of basic social services to local government. With no experience in shouldering vital responsibilities, they say, local governments could find themselves unable to provide health and education, or may allow costs to rise so sharply that ordinary citizens cannot meet them anymore. In addition, there is a danger that public services like education will, in the future, be delivered according to ethnic or even religious criteria, excluding minority groups (indigenous peoples among them), since the equalizing influence of central government policy no longer holds.

Inevitably, and fifthly, NGOs are questioning the autonomy of policy-makers in Jakarta in formulating the autonomy laws. The spirit of centralism, they argue, is still howling in the Acts as a result of the influence of the International Monetary Fund (IMF) and other foreign stakeholders that have given loans to Indonesia. In order to have a guarantee for the return of their loans, these players have ensured that the exploitation of high-earning natural resources is left under central government control, which is why separate Acts granting better conditions to Jakarta will be formulated for timber- and mineral-rich Irian Jaya (West Papua) as well as for Aceh where the number one foreign currency earner, natural gas, comes from.

Sixthly, NGOs have come to the conclusion that the present power-sharing scheme with the regions will - in all likelihood - not empower the broad population in the provinces but the provincial elites, thereby exacerbating rather than alleviating the lot of the rural masses. The empowerment of local government is widely expected to result in an increase in corruption, and environmentalists warn that money-hungry local politicians will encourage faster timber extraction and hence quicker deforestation. And instead of putting a lid on environmentally harmful mining operations, they maintain, local legislators have merely used their new clout to demand bigger payments from the firms.

Lastly, and seventhly, some Indonesian and foreign NGOs hold decentralization more or less directly responsible for some of the worse instances of communal clashes that have shaken the archipelago over the past two years. Since the beginning of 1999, a score of new districts and four new provinces have been set up in an attempt to accommodate the demands of local elites for the spoils of office and power. In many cases, this engendered intense struggles over the boundaries of the new units and entitlement to office, and often violence prior to assembly elections. The creation of the province of North Maluku in mid-1999 is a case in point, Poso in Central Sulawesi (see below) is another one: as the elites of the old sultanates of Ternate and Tidore fought for supremacy in the new province-to-be, and commoners tried to prevent the resurgence of aristocratic power, the domains of the sultanates, including North Halmahera, soon descended into communal strife as each side tried to weaken the power base of the other. As a result, fighting between Muslims and Christians since October 1999 has left about 3,000 dead and made over 100,000 more homeless. In the face of the pernicious effects of ill-planned decentralization efforts, therefore, foreign NGOs like the US-based Human Rights Watch have called for a "complete moratorium on any administrative boundary changes or local administration restructuring until a credible law and order presence is in place and the situation in Jakarta becomes more stable".

In sum, the critics of the laws on regional autonomy fear that they will only replace the exploitative and corrupt rule of the centre with that of local elites, that they prolong, if not worsen, the mismanagement of natural resources, and that they will fail to strengthen the bases of local communities in terms of self-governance and the enjoyment of the benefits from the extraction of the natural wealth of their ancestral domains. They also call into question the present capabilities of the component ethnic groups and their elites in the regions to devise feasible ways of living together and governing themselves, which makes the centre's rush to devolve power and reorder the administrative set-up of the country a sure recipe for disaster.

The Position of AMAN on Regional Autonomy

AMAN (Alyansi Masyarakat Adat Nusantara) was founded as the first and so-far only nation-wide umbrella organization of indigenous peoples in March, 1999. Its position on regional autonomy, submitted for this Yearbook, is rendered below:

"Given all these problems, there should be serious thought on how the Indonesian people could find its way out of the pervasive social, political and economic crisis the country finds itself in today. There is a danger that the implementation of an ill-conceived decentralization scheme and the power vacuum it creates will considerably worsen the problems of the Republic, especially in the short run. The outbreak of violent conflicts such as the one in Sampit, Central Kalimantan, in February and March, 2001, highlights the need for urgent political action. Legislative measures on autonomy and the agrarian question will have to be informed by the following basic needs to improve the well-being of indigenous peoples and the rural population in general:

- fair and equal access to resources, especially to land;
- sustainability of production, consumption, and distribution systems;
- sustainability of other systems and sub-systems of social reproduction;
- sustainability of autonomous local livelihood systems.

Throughout its history, the country has seen how the concentration of decision-making powers over land and natural resources in the central government has had negative impacts on ordinary people's lives. The haves are getting richer, while the have-nots are getting poorer. Without the empowerment of the local units of governance, we are faced with the prospect of never-ending exploitation by the State, i.e. the central government and its cronies, of indigenous rights, particularly the right to enjoy at least some of the fruits of the exploitation of natural resources in their ancestral territories. The problem is: is Local Autonomy, as it has been conceptualized now, a suitable way out of the crisis, and can it erase the roots of problems such as the break-up in Suharto times of autochthonous structures of local governance in favor of the creation of uniform *desa* (village) structures with its concomitant officials under government control? The continued reliance of Act No. 22/1999 on the concept of *desa* as a future locus of the powers of self-regulation and self-governance, albeit qualified as 'based on local customary systems and local history', bodes ill for the re-empowerment of customary systems of local governance. As long as they are premised on uniformity, the lowest administrative units and their officials will continue to lack real authority, which is so direly needed if ethnic and religious strife is to be effectively checked in the future. If it is to be successful, the administrative re-organization of the country has to be inspired by the structures developed by the local people (indigenous peoples among them) in accordance with their own culture and socio-political condition. Then, and only then, can we truly speak of self-government, of government by the people."

Not the Only Worrying Law

Over the past year, the impacts of another new law of crucial importance for indigenous peoples, the new Forestry Law, have begun to make themselves felt. The law, passed during the last week of the presidency of B.J. Habibie, in October 1999, recognizes – for the first time in Indonesian history – the existence of indigenous peoples and their customary rights to their territories. It does not, however, put indigenous land rights under any kind of automatic State protection by virtue of native title. The law also contains no provisions stipulating the need to include indigenous peoples in development planning processes concerning their land. Far from being offered permanent titles, local indigenous communities are obliged to form cooperatives in order to apply for use and management rights over their ancestral domains; in the process, they have to compete with commercial firms who are given the same right to apply for resource extraction permits over areas inhabited by indigenous peoples.

The new forestry law, moreover, in keeping with its general thrust towards "social forestry", provides for the re-classification of some parts of what was once exclusively classified as "State forests" as *Hutan Kerakyatan Adat* or "People's Customary Forest". Use rights over these parts of village territories are placed under the jurisdiction of the respective local communities who are free to retain exclusive rights over the exploitation of forest resources or else grant access to them to outside interests. Economically hard-pressed, many local communities have come to see this as an opportunity to make quick money, without realizing the dangers. Indonesian and Malaysian bosses (*cukong*) in their hundreds have tried to capitalize on this by acquiring so-called *Izin Pemanfaatan Kayu* (IPK) or *Izin Pemanfaatan Hasil Hutan* (IPHH) from indigenous communities. For the – often empty – promise of supplying valuable goods (like high-yield rice seeds or a community truck) to the communities or providing them with irrigated rice fields or a water supply once the forest has been removed, and generally in return for sums of cash, the *cukong* thus acquire the right to strip the forest. Since many companies disappear without fulfilling their promises, many indigenous communities have wound up frustrated and bitter which, however, does not prevent others from entering into the same fraudulent and environmentally destructive agreements.

It is therefore one of the cruel ironies of the age of "reform" in post-Suharto Indonesia that environmentalists and, belatedly, indigenous communities came to realize that, in some ways, the formula of "the forest for those who live in it" has backfired. An unintended but predictable consequence of democratizing access to the forest and its resources is that local communities are putting short-term benefits above long-term considerations and have thus become willing accomplices in the destruction of their forests.

Indigenous Peoples' Self-organization and Initiatives for Policy Reform

Nevertheless, some positive developments on the way to policy reform at the local level could be registered over the last year. Some indigenous communities have succeeded in drafting bills to be passed by local legislative assemblies (DPRD) at the district or provincial level. Some of these bills, if passed, will go a long way towards asserting the recognition of indigenous peoples' existence and their sovereignty over ancestral territory, including the rights to natural resource management and respect for local culture.

Sanggau in West Kalimantan, Bali and Lombok in West Nusa Tenggara, Southeastern Maluku, Toraja in South Sulawesi, are some districts of the Republic where indigenous communities have succeeded in drafting local legislation bills. While not all of them have yet been formally submitted to the local legislature, they have at least been proposed and discussed with local government, local legislative assemblies and other stakeholders.

Not surprisingly, some of these draft bills demand that the *desa*, as the lowest administrative unit of governance, tainted as it is by its function as a tool of government manipulation, be replaced by autochthonous structures of local self-government.

Sulawesi is perhaps the region where implementation of Local Autonomy has drawn the most lively response from NGOs, indigenous organizations and other stakeholders in natural resource management and agrarian reform. Except for West Kalimantan, Southeast Maluku and Lombok, there is probably no other region where indigenous peoples and local NGOs cooperate as smoothly in putting forward people's aspirations and launching policy initiatives to assert them. The Pakava, Toraja and Muna have framed their own draft bills concerning autonomy and natural resource management. Toraja has even developed into something of a pilot project for NGOs to explore the possibilities of attaining meaningful local autonomy through working with local legislatures.

According to reports from ***East Nusa Tenggara*** (***NTT***), there have been repeated meetings at kampung (village) level to discuss the revitalization of traditional political institutions and resource management systems within ancestral territories. The Kuan Hiun, in the districts of Soe and Kefa, succeeded in pushing the local government to revoke a regulation that denies the existence of adat (customary/ ancestral) land. In the same districts, local communities have also successfully reclaimed ancestral land from an industrial tree plantation (HTI or Hutan Tanaman Industri).

In ***Sumatra***, the indigenous movement has made significant progress with regard to the revitalization of customary natural resource management institutions. North Sumatra, West Sumatra, Jambi and Riau are just some of the provinces in which indigenous peoples' organisations, along with local NGOs, have worked hard to force local government and investors to recognize their sovereignty over ancestral domains and their right to the self-management of their natural resources.

In the context of AMAN's work, some new indigenous organizations have sprung up at community level. In East Kalimantan, for instance, AMA (Alyansi Masyarakat Adat) Paser, an organization of indigenous peoples living in Paser District, was founded.

Conflicts – Agrarian, Communal, Separatist

Still, on the ground, the land base of indigenous communities continues to be under severe pressure all over the archipelago.

In ***North Sumatra***, conflicts between indigenous communities and government over land and other natural resources are rife. Over the past year, indigenous villagers have staged frequent mass actions (e.g. blocking the access to the operation sites of some companies) and called public hearings with the executive and legislative bodies to press for recognition of their sovereignty over land and natural resources. Generally, however, these efforts have been met with repression on the part of the police and military. Most cases are agrarian conflicts involving State-owned plantation companies (PTP) or else are over the planned development of public facilities in urban areas.

Although police repression is still a likely response from the State whenever indigenous communities become emboldened, many indigenous groups throughout the archipelago have grown more assertive in promoting their own systems of political governance and customary law. Some communities are also pointing proudly to the fact that by recalling and upholding traditional modes of conflict resolution, they have successfully prevented their communities from sliding into communal violence. For example, when the island of Kei Kecil was wrecked by rioting, *Raja* Johanes Rahail, the revered chief of a dozen Christian villages around Watlaar on the island of Kei Besar in Southeastern Maluku, succeeded in preventing people from resorting to arms, however frightening the rumours from outside. He reminded them that, according to customary law, communities would only go to war over boundary disputes and disputes involving the honour of women, and since no such grievances existed against the purported Muslim enemies, the people of Watlaar should stay out of the fray.

Unfortunately, no such remedies are available for ***Aceh***, since 1989 the province that boasts the saddest human rights record and has suffered the highest number of conflict victims. While intellectuals, academics, political elites and foreign observers are debating autonomy, Aceh's insurgency problem is as far from a solution as ever. President Wahid initially took a far more moderate stance towards the province's separatists than his predecessors. He rejected the military's demands to once again impose martial law there and instructed his negotiators instead to agree to the renewal of a truce, which had been in force since May, 2000. The new truce, pathetically called a "moratorium on violence", became operative on January 15, 2001. Previously, he had already announced the government's willingness to let the province adopt *sharia* law, a widespread demand in Aceh. Late last year, his government had also rushed through a US$ 10.5 million aid package for the province to help alleviate the poverty caused by decades of government neglect.

Nevertheless, during the first five months of 2001, it has become obvious that the Wahid government has no real concept of how to solve the conflict in Aceh. Whilst last year he had come forward with an offer to hold a referendum on independence, he later rescinded it, stating that he had meant a referendum on the introduction of the *sharia*. His initial promises to right the wrongs of the past have been exposed as hollow, since he has consistently failed to deliver on them. In the meantime, the army has made it clear that it would oppose any East Timor-style independence vote, with force if need be. According to most outside observers, a fair referendum in Aceh would produce a resounding "yes" for independence.

The "moratorium" was supposed to be a chance for the government and the rebels of the Free Aceh Movement (Gerakan Aceh

Merdeka, GAM) to sit down on neutral ground in Europe and discuss the political issues separating them. That chance has passed largely unused, not only because neither side would move away from their initial political positions but also because on the ground, the truce was consistently violated by rebels and security forces alike. Simultaneously with the army's crackdown on West Papuan independence activists in October, 2000, the Indonesian Defense Minister, Mahfud M.D., had declared that it would end its "persuasive approach" to the insurgency in Aceh because, said Mahfud, the goodwill it had extended had been betrayed by GAM. Yet there is little evidence that the security forces themselves ever felt bound by the letter of the agreement. Throughout the present and the previous truce, the police continued to conduct sweeping operations, ostensibly to seize weapons and hunt down suspected GAM sympathizers. Under cover of the truce, mutual raids and the "disappearance" of suspected rebel sympathizers by army elements continued. During the year 2000, more than 1200 people – mostly civilians – were killed in Aceh, and throughout the first three months of this year alone, at least 250 more.

Maybe the conflict that was followed most closely abroad was the one that pitted indigenous Dayak against Madurese migrants in Sampit and other areas of ***Central Kalimantan***. For more than a month, the area was brimming with the presence of camera teams and newspaper journalists when Dayak tribesmen, mostly Ngaju and Ot Danum, hunted down settlers from the barren island of Madura off the north-eastern tip of Java. The story they were after was the tale of the "new generation of head-hunters" (a *Washington Post* headline) whose swords were once again "eating people" and whose warriors were reviving that "disused tribal practice" in defense of their territories and "ethnic pride". European and American homes were flooded with the grisly images of marauding savages and their decapitated and disembowelled victims but, generally, the shock troops of war journalism bothered very little to back up their visual trophies with convincing inquiries into the economic and political reasons for the "atavistic" slaughter they had witnessed.

The Indonesian part of Borneo has, over the past years, witnessed several outbreaks of violence against migrants from Madura and the perpetrators were not always Dayak. Most noted are the bloody purges of Madurese from the interior of West Kalimantan by Dayak between January and March, 1997, killing some 500 – according to unofficial estimates even as many as 1 to 2,000 – migrants and driving 10,000 more from their homes. The same areas were partly the scene of another round of clashes exactly two years later when native Malay of Sambas, West Kalimantan, rose to drive out the

Madurese from their district, producing 200 casualties on the Madurese side and permanently displacing some 60,000 others, the vast majority of whom languish to this day in refugee camps in the provincial capital, Pontianak.

Central Kalimantan itself displays a rather long history of conflict between the native Dayak and the Madurese. The Dayak point to at least 16 instances of bloodshed and lesser clashes since 1972 which, they say, invariably had their origins in acts of violence – stabbings or rape – by the Madurese. The majority of these murders and the bloody skirmishes they sometimes occasioned were left to the two sides to mediate; the few instances that prompted police intervention were "settled" in a manner typical of "New Order" troubleshooting: under the auspices of the security forces, the warring parties, represented by government-accredited leaders with little credibility in their respective communities, were forced to sign "peace agreements" that were not so much genuine efforts at reconciliation as rituals of submission to State authority, leaving the basic grievances of the two camps untouched. After two major clashes in Kotawaringin Timur in July and December 2000, it was clear that a time bomb was ticking but the authorities pretended not to notice it.

Tempers were still high when Dayak and Madurese high-school students got into a brawl around mid-January, 2001, in the logging port town of Sampit, Kotawaringin Timur. A Madurese settler, known, say the Dayak, for his criminal proclivities, drew the ire of the Dayak side when he intervened in the brawl. On February 18, the Dayak attacked his house and killed three of the man's family members, whereupon a large Madurese crowd tried to burn a Dayak house, together with 39 people who had taken refuge there. The town of Sampit quickly descended into all-out war between the two groups as both sides ransacked and burned houses and killed whoever they could get their hands on. For a day and a half, the Madurese, who outnumbered the Dayak in the town, gained the upper hand. Soon, however, fortunes turned, for in the evening of February 19, the Dayak returned, reinforced by thousands of men from the surrounding countryside. Now, hundreds of Madurese houses on the outskirts of the town went up in flames and their inhabitants, if they did not flee in time, were slaughtered. Madurese settlements in much of the hinterland were torched and hundreds of migrants were killed. Thousands of Madurese men, women and children used every available form of transportation to escape the mayhem, crowding into the town's police headquarters or trying to leave Sampit altogether. The government sent navy vessels to evacuate as many of the refugees as possible but, for hundreds of them, help came too late.

Within a matter of days, the violence had spread to Kuala Kayan, a subdistrict 110 km north of Sampit, and to Palangkaraya, the provincial capital, some 220 km away. While the killings in the epicenter of the riots ebbed once all Madurese had been wiped out or driven away, the purges went on in the hinterland. As late as April 21, there were reports that there were still manhunts for migrants in the southeastern district of Kuala Kapuas and the westernmost one, Pangkalanbun. Dayak leaders threatened that there would be killings as long as Madurese could still be found in the province. The official death toll of the riots was given as around 500 but local sources indicate that there could have been between 2,000 and 3,000 casualties. A total of 40,000 Madurese were evacuated to refugee centers in East Java and Madura where they will have to stay without any prospect of ever being able to return to Kalimantan. The majority were probably born in Borneo and have never seen the island from where their parents or grandparents hailed before in their lives.

The security forces were slow to react to the crisis in Central Kalimantan. Police as well as the army units who were called in to restore order were seen standing idly by while houses were torched and people killed. In fact, in a development that surprised foreign reporters more than domestic observers, on 27 February the police and army started shooting at each other in the docks of Sampit. As it turned out, the stakes were the hefty fees both police and army had started to ask from the refugees for the favour of rescuing them from the war zone. Instead of turning their guns on rioters and murderers, the security forces were using them to fight a turf war among racketeers. To insiders, the dismal performance of the soldiers and police comes as no surprise since "internal security is the last thing on their mind", as one Western diplomat put it. Rather, assignment in Central Kalimantan to the men in uniform means an opportunity to get rich on illegal logging, gambling and prostitution rackets. On top of this, there is a longstanding rivalry between the army and the police which probably compounded the difficulties of restoring law and order.

Just as the disastrous hands-off approach of the security forces was entirely predictable, so were the hapless attempts of the authorities in trying to identify the causes of the slaughter. Early on, officials presented the riots as the handiwork of two disgruntled Dayak civil servants who stood to lose their jobs in an administrative reshuffle.

However, neither the authorities' attempts to find scapegoats nor a foreign press pandering to images of the savage Dayak can hope to shed light on the real causes of the carnage. Far from having their origins in petty personal motives or in primordial ethnicity, the present killings in Central Kalimantan, like those in West Kalimantan in 1997 and 1999, reflect a sharp conflict over natural resources and the heritage of more than 30 years of political marginalization of the indigenous Dayak population by outsiders.

The Dayak of Kalimantan have long felt under-represented in the way their four provinces are governed. While in the pre-1965 period, there were Dayak governors in Central and West Kalimantan (who, by the way, enjoyed tremendous popularity among the provinces' indigenous population), ever since the top posts in provincial government had been the exclusive domain of Javanese army officers. As for Central Kalimantan, even Madurese leaders found it easier to ascend to powerful positions than the native Dayak, a fact that is all the more upsetting since, in the eyes of the indigenous population, the province of Central Kalimantan had once been granted by the country's first president, Sukarno, to the Dayak as mainly their preserve.

The seeds of economic conflict were planted more than 30 years ago when the Suharto government began shipping landless farmers from overcrowded Java, Madura and Bali to the less densely populated outer islands. Since the 1970s, and above all during the 1980s, the Indonesian Government resorted to allocating large tracts of primary forest as logging concessions and for palm oil and other plantations without regard for indigenous land ownership or use. Government-supported transmigrants and spontaneous migrants (the Madurese figure prominently among the latter) provided the work force for these schemes. Little was done to mitigate the shock of ethnically and religiously diverse groups suddenly being brought into competition for limited economic opportunities. The official transmigration program and the encouragement by the State of migration in general "built conflict into the genetic code of the provinces", as one Jakarta-based diplomat put it.

Local resentment of the Madurese has three specific factors. Although themselves poor, unskilled and socially dislocated, as newcomers, Madurese often occupy farmland owned by Dayaks. On top of this, they also dominate petty trading in the towns and provide the labour force that clears the vanishing timber stands, which are controlled by military and other business interests in Jakarta. Although the land areas and the job opportunities wrested from the Dayak by Madurese migrants may be insignificant compared with the acreage alienated by the Government as logging concessions or plantations, the Madurese provide an easier target for resentment than mighty corporations or rapacious army generals.

These economic factors are exacerbated by cultural differences. Madurese culture strongly emphasises personal honour, and Madurese men are heirs to a vigorous martial tradition. Borneans and other Indonesians characterise them as rough, violent and quarrelsome. They are known to resort to particularly uncanny methods of asserting themselves in the contest for the land that characterizes Kalimantan's "frontier", like when they harvest other people's crops and knowingly squat on land belonging to others.

Thus although on structural grounds the Dayaks and Madurese must both be seen as the victims of the economic and political policies of the Suharto regime and its corporate collaborators, from a local perspective there are grievances enough to explain why they had to turn against each other.

Sources

Kompas, 18, 19, 20, February 2001.

Kompas, 13 - 20, July 2000.

Media Indonesia, 18, 19, March 2001.

Far Eastern Economic Review.

The Economist, Christian Science Monitor.

Inside Indonesia.

Südostasien.

The Jakarta Post.

R. Yando Zakaria in *Pemulihan Kehidupan Desa dan UU*, No. 22 Tahun 1999, a paper presented in the workshop of "Penguatan Dewan Perwakilan Rakyat Daerah ..."

R. Yando Zakaria and Noer Fauzi in *Pembaruan Desa dan Agraria Dalam Konteks Otonomi Daerah*, a position paper of Badan Pembaruan Agraria.

Interview by phone with some of AMAN's National Council members and NGO activists at local level.

Draft bill from Bali, Pakava, Sanggau, Maluku Tenggara.

MALAYSIA

Developments in indigenous issues in Malaysia appear to be increasingly dictated by two main dynamics: the political landscape (especially as it affects the fate of the party in power) and the interventions of indigenous peoples themselves (to secure their own fate and to seek redress). Both have different motivations but both serve to further alter the political and social context of indigenous peoples in Malaysia today.

Politics and Indigenous Peoples

Unquestionably, the way national and local politics is structured, and the fast-changing political dynamic resulting from this (especially as it pertains to electoral politics), has had an impact on the way indigenous peoples in Malaysia have been perceived and treated.

For instance, given the split in the Malay vote in the peninsula and the accompanying political insecurity in the ruling National Front, the vote of the Orang Asli minority has become crucial in certain constituencies, especially in the timber-rich state of Pahang. For this reason, the ruling coalition has stepped up its rhetoric-filled programmes for the Orang Asli – dishing out (or at least announcing) development funds for the communities in the interior areas or repeating the promises of titled lots for them in new resettlement schemes.

Predictably also, given that women were found to be an important reservoir of votes in the last general election, the ruling coalition has also directed its attention at Orang Asli women (and their votes). In particular, it proposed increasing the number of its women development centres in Orang Asli areas from a mere three in 1998 to 27 in 2001. Ironically, none of the existing centres are led by Orang Asli women – apparently because there were no Orang Asli women who qualified for such positions. This bluff, however, was exposed in 2000 when, once word got round that two such positions were vacant, eight aptly-qualified Orang Asli women applied for the positions. Alas, none of them were considered, let alone accepted – perhaps in accordance with the trend to slowly decrease the number of Orang Asli holding positions in the very department that is supposed to administer them, the Department of Orang Asli Affairs (JHEOA).

In the east Malaysian state of Sabah, the continual political manoeuvrings among indigenous elites has effectively reduced indigenous participation and dominance in the political arena from its high in the mid-1980s to levels where individual self-interest now eclipses the motivation to do good for the indigenous population. The decline in indigenous autonomy in Sabah was further sealed with the unprecedented introduction of the peninsular-based Malay-Muslim party UMNO into the state a decade later. Its presence invariably changed the political climate of the state, to the great disadvantage of the indigenous majority. One early strategy to this effect was the polarisation of the electorate along religious lines – viz. into Muslim-indigenous, non-Muslim indigenous and non-indigenous (i.e. Chinese-dominated) constituencies. This effectively led to a rebuff of multi-racial parties, causing the non-Muslim indigenous groups in particular to be split into four political parties, none of which can ever hope to regain power on its own or even as a coalition if voting patterns follow religious lines.

In the other east Malaysian state of Sarawak, state elections are, however, expected in 2001. Despite the unevenness of the political playing field and the absence of a united and credible opposition, there is some potential for a disturbance of the status quo. This is because issues that the Orang Ulu and Dayak indigenous groups hold close to their hearts are coming to the fore again. Invariably, these are the long-standing issues that relate to their claim to native customary rights (NCR) over their lands – claims that are persistently being ignored by the government and its civil servants. However, it is without doubt that the subtle, yet greatest, challenge to indigenous rights in Sarawak recently was the speedy amendment to the Sarawak Land Code in 2000, adopted without sufficient consultation and consensus from the indigenous groups. In essence, the amendment sought to further restrict the indigenous communities to their claims for native customary rights over their land while at the same time enabling the state government to extinguish such customary rights with greater ease. When the Land Code was first introduced in 1958, it was clear that the boundaries of such NCR land were to be determined in accordance with the spirit and methods of the customary laws and practices of the affected indigenous communities. The 2000 amendments, however, effectively removed this provision, thereby placing an undue burden on the indigenous groups to stake their claim to NCR land.

Development and Encroachments

In the preceding year, indigenous lands continued to be encroached on by corporations and governments bent on viewing the indigenous peoples as a necessary nuisance in the pursuit of their own enrichment. Logging remains the major culprit. In January 2001, Penan from Long Sayan and Long Belok in Ulu Baram, Sarawak erected fresh blockades on logging roads constructed by Lajong Lumber, a subsidiary of Rimbunan Hijau, one of the major logging companies in Sarawak, which has also expanded its operations overseas. In Sabah, logging activities in Long Pasia, located within the 80,000 hectare biodiversity-rich Ulu Padas area, are threatening ancient burial sites, medicinal plants, fish and animal resources and the historic settlements of the Lun Dayeh people. The Orang Asli in Peninsular Malaysia have also had to contend with more and more logging concessions being given out that invariably encroach upon their traditional lands. In the Sungei Lepar area in Pahang, for example, the Jakuns set up blockades in early 2001 when logging trucks and activities posed a danger to the community's safety and threatened their livelihoods. However, in keeping with the political strategy of not upsetting the Orang Asli for fear of losing their vote, the State Minister of Orang Asli Affairs immediately went to the area and, amidst wide media publicity, gave out cash compensation to the villagers to placate them.

But logging is swiftly being replaced by mega-development projects as the single-most devastating factor affecting indigenous lands and their cultures. Unlike logging activities, mega-development projects (such as huge plantation schemes, dams and other industrial projects) not only cause environmental damage but also permanently seize the lands of indigenous peoples. The US$5.3 billion Sabah Pulp and Paper Mill to be set up in Kalabakan, Tawau for example, will involve the clearing of 220,000 hectares of forest close to the Maliau Basin and Danum Valley conservation areas. The proposed multimillion dollar steel mill near Kudat in northern Sabah is another example. In Peninsular Malaysia, the construction of dams is also affecting Orang Asli lives. The Sungei Selangor Dam, for example, for which construction began in 2000, ultimately encroached upon the traditional lands of two Temuan villages. Approval has also been given to construct another dam in Pahang state, which will also affect the Temuan of the Klau area.

In Sarawak, such mega-development projects have already been embarked upon and the effects on the indigenous population are evident. The giant Bakun Hydroelectric Dam project, discontinued twice in the past due to lack of funds, has now been revived once more. Nevertheless, for the 1,700 indigenous families who were resettled in 1997, the predicted hardship and consequences of resettlement are already being experienced. For example, not only is the soil in the resettlement area not fertile, it is also too sandy for subsistence agriculture. Further, the original resettled population (of approximately 10,000 persons) has now increased by about 40 per cent, thereby requiring additional housing units. The housing units themselves are the subject of complaint. Despite being poorly designed and built, they come with an unjustified and exorbitant price-tag, and are too far from their subsistence fields. The result of all this: frequent communal conflict, especially over depleting resources, increased alcoholism especially among the men-folk, a high dropout rate among students, women losing their independence as a result of the changing social relations, and food shortages.

Apart from logging companies and industrial investors, the indigenous peoples of Sarawak also face the threat of losing their customary lands to agribusiness corporations and land development agencies. In at least one case, the conflict had fatal consequences for the encroachers. This was in Ulu Niah, where Sarawak Oil Palm Berhad wanted to occupy the customary lands of two Iban communities, with the tacit backing of state authorities. The corporation employed armed thugs to instil fear in the native peoples in the hope that they would vacate their customary lands. These gangsters, seeing that the police were not acting on the numerous police reports made against them, became more aggressive until the inevitable clash between themselves and the villagers resulted in four of them being killed. Nineteen of the villagers were, however, charged with murder and were detained for 18 months before their case was heard in November 2000. Eight were eventually discharged in March 2001 but the remaining eleven are still in prison awaiting the conclusion of their court hearing.

Reasserting Identity and Indigenous Rights

The courts, however, seem to be the final recourse for several indigenous groups in their strive for land rights. One case involved the Borneo Pulp and Paper Mill mega-project and its constituent forest plantation, which has caused much distress and dislocation of the native population in Bintulu and Sibu, Sarawak. This is a project of the Sarawak State Government and the Sarawak Timber Industry Development Corporation (STIDC) and involves 606,200 hectares of land. Much of this land is native customary lands belonging to the Iban, Kenyah, Kayan, Buketan, Punan as well as the minority Tatau dan Lugat peoples. A total of 180 longhouses are affected. While some communities have agreed to be resettled, others decided to challenge the appropriation of their lands and sought redress in the courts. The case was heard at the end of 2000 and a decision is now awaited.

In Sabah, the Dusun community in Ulu Apin-Apin, Keningau are also using the courts to challenge the state's right to grant a logging concession in the protected forest-cum-water catchment area that the indigenous communities depend on for their subsistence. In Peninsular Malaysia, the case of seven Temuans (who lost part of their traditional lands when it was acquired in 1996 for the construction of the highway to the Kuala Lumpur International Airport) resumed its hearing in December 2000. The Orang Asli are seeking a declaration that they are the owners of the land by custom, the holders of native title to the land and the holders of usufructuary rights. They are also claiming that their customary and propriety rights over the land that they and their forefathers have occupied and cultivated for a long time were not extinguished by any law. The state and federal governments, for their part, are claiming that the right given to the Orang Asli was related to occupation and residence only and not to ownership. The hearing proper ended in March 2001 and a decision on this precedent-setting case is expected soon.

Apart from taking the government to court over their customary lands, indigenous peoples in Malaysia are also asserting their identity in various ways. For example, the Warriors' Day (*Bujang Berani*) Celebration in Sarawak, a grassroots event organised annually to commemorate the homecoming of the Dayak warriors who were wrongly detained by the police for putting up blockades to protect their customary lands eleven years ago, was again celebrated in October 2000 in the Upper Bakun area. In Sabah, local indigenous groups continue to organise Cultural Exchanges that not only serve to reassert their indigenous cultural identity but also act as a means to unite the various indigenous groups in the state on their own terms. Thus far, these *Pertemuan Budaya* gatherings have been held in the interior areas such as Terian and Kinabatangan.

In Peninsular Malaysia, arguing that unity in numbers and culture is one way to assert their presence – and consequently claim their rights – the Perak chapter of the Peninsular Malaysia Orang Asli Association (POASM) has embarked on a programme to "standardise" Orang Asli culture. It is, however, unclear how far the Semai-dominated chapter will be able to convince the other ethnic subgroups to give up their own traditions for that of the dominant group. Nevertheless, to a certain extent it has succeeded in getting some groups to accept the third Saturday of February as the *Hari Perayaan Orang Asli* or the Orang Asli Festival Day. The first such common celebration day was held on 24 February 2001 and was mainly celebrated by the lowland Semai of Perak. However, some other communities endorsed the proposal – such as the Temuans of Bukit Bangkung and the Mah Meris of Pulau Carey – and coincided their own annual celebration with this date.

Land rights and indigenous identity aside, the indigenous peoples of Malaysia have also concerned themselves with other issues. One of these is the threat to their biological resources and the theft of their indigenous knowledge for commercial gain. To this end, indigenous leaders and communities were involved in discussions relating to the certification of timber from their areas and in the drafting of laws pertaining to the extraction and use of biological resources. However, indigenous participation in these moves remained limited. In an attempt to address some of these issues, the Indigenous Peoples Network of Malaysia (JOAS), in collaboration with the Faculty of Law of the University of Malaya, organised a round table conference in March 2000 between government, academic and indigenous representatives on the issue of Biodiversity and Indigenous Knowledge. This round table conference represented yet another of the very varied means the indigenous peoples of Malaysia are using to assert their rights and cultural difference.

THAILAND

Over the past 50 years, highland communities[1] in Thailand have faced serious pressure from outside agencies, in particular the government, to adapt and accept development policies and activities modifying their way of life and their resource management practices. This has resulted in an attempted change to new agricultural systems and methods of production together with new technologies and equipment altering their traditional and distinct way of life. It is argued by representatives of the lowland Thai population[2] that highland communities are overexploiting the country's natural resources in the highlands, with the result that the lowland people lay claim over forest areas and reserve for themselves the right to convert such land into protected areas. This has, in turn, led to serious conflicts between the two groups. Ultimately, as one scholar writes, "Such conflict is a direct violation of the basic Human Rights of the Highland communities"[3].

Highland communities are not only subject to pressure through individual land encroachment but society as a whole fails to adequately respect and accept their right to traditional lands. This opinion is currently backed up by State and Federal law concerning the control and management of natural resources. Added to the idea that highland people are destroyers of the forest are stronger accusations, for example, that highland people are responsible for the spread of narcotics. Furthermore, highland people are often viewed as "non-Thai" or illegal aliens.

Highland Development Policy Conflicts

Current policies concerning the highland communities of northern Thailand focus on the problem of national security in border areas, the prevention of deforestation and the control of narcotics. These policies are implemented under the "Community and Environment Development Drug Control Highland Master Plan". However, highland community members were not directly involved in the decision-making or planning process relating to this Master Plan. With regard to policy development for highland community decision-making, the planning process remains highly centralized, ethnocentric and discriminatory. Little emphasis is placed on the participation of target populations. Even though the Thai government has vowed to focus on people's participation, freedom, the protection of basic rights and decentralized decision-making, highland communities remain the victim of ill-conceived and poorly planned development initiatives, and are subject to strict conditions and rules associated with these programs, running the risk of further restrictions on their land and further violations of their rights.

When analysing the situation of the highland peoples' rights in Thailand it must be viewed with respect to both previous and current government policies. On the 6th January 2001, the Kingdom of Thailand went to the polling booths and elected a new government under the leadership of Dr. Thaksin Shinawatra. To date, it is clear that the new government has returned to previous policy approaches concerning highland communities, focusing policy mechanisms on drug suppression and border conflict resolution. Thus far, no clear policy has been established by the new government pertaining to the rights and status of highland communities.

In sum, the concepts and policies of highland development from the past to the present have been implemented under the banner of national security, resulting in attempts to integrate and assimilate ethnic minority groups into the wider Thai society. No matter what development approach was used - whether the static approach focusing on social welfare and poverty relief or the dynamic development approach emphasizing resolution of the drug problem and national security - by concentrating primarily on natural resource management and improved agricultural technology, considerable change has been forced on highland communities along with the restrictions imposed through the protection of watershed areas and the creation of national parks.

Rights and Security Issues

Two main policies directly affect the way of life and survival of highland peoples, namely: 1. the highland forest management policy, and 2. the citizenship policy. These policies, although at first glance seemingly unrelated, are in fact closely linked.

Highland Forest Management Policy

Over the past decade, the government has created policy measures for conservation of natural resources, reforestation and watershed improvement in order to solve the problem of the decline in soil fertility in northern Thailand. However, these policies fail to recognize the fact that there are currently 873,713 people living in these protected areas[4]. Such policies not only lead to conflict and uncertainty over the management of these resources between government bodies and highland peoples but also create problems in terms of the social, economic and political climate in highland areas.

With respect to forestry, four Acts have been used by the government in the name of Natural Resource Management: the Forestry Act (2484 BE) 1941, the Forestry Conservation Act (2507 BE) 1964, the National Park Act (2504 BE) 1961 and the Wildlife Conservation and Protection Act (2535 BE) 1992. When considering the concept and detail of these laws, one discovers that these Acts were implemented and introduced during the period when the government increased measures to take control of natural resource management, distinguishing between two classes of land rights only: private land holding rights and government land rights. All land that was not privately owned was considered to be under the control of the State.

According to these Acts, those who live in such areas have no legal claim to the land, regardless of the length of time they have resided in the area. In some instances, these communities were living in these - now protected - areas before the law was created. It can be seen that there are certain loopholes in the current Forestry Law that have been exploited for individual capitalist purposes, resulting in greater pressure on natural resources. This in turn creates conflict between government departments, local people and people's organizations at the community level.

Ultimately, the problem is caused by land seizures in highland community areas and increasing in-migration to forests. This has proved to be the catalyst for continued friction between highland communities and those authorities that wish to take control over forestry management, conserve the watershed and try to force highland people off their traditional lands. This is done with reference to the incorrect but common belief that highland peoples cannot manage these resources in a sustainable manner.

Thai Citizenship Policy

The policy concerning citizenship is complex and is closely linked to policies on national security, deforestation and narcotics. Due to their alleged role in the narcotics trade, deforestation and national security, highland peoples are rarely granted full Thai citizenship under the Constitution of the Kingdom of Thailand. It has been recognized that this lack of citizenship is the most important issue facing highland people today. It directly affects their personal security and leads to the loss of other basic rights, such as the right to make a living, the right to use the forest in a sustainable manner, the right to participate in development activities and the right to have access to government facilities and services[5].

To date, the citizenship granting process has been slow and cumbersome and citizenship applications can be cancelled at any stage of the proceedings, whenever applicants are perceived as a threat to national security. Today, the number of eligible highland people yet to be granted citizenship by the government is 509,110 persons out of a total population of 873,713. This figure does not include other minority groups[6].

The Ministry of Interior recently introduced new regulations concerning the granting of citizenship, which classified highland peoples into different time periods depending on when they or past generations migrated to Thailand. Another classification focuses on the legal status of the parents. However, as explained above this, process remains complicated, slow and confusing.

According to the Ministry of Interior's classification of highland groups, those who have the opportunity to be granted Thai citizenship must meet the following criteria: highland people currently residing in Thailand who migrated to Thailand between 1913 and 1972. It is estimated that there are approximately 100,000 people who fall within this category.

Highland people currently residing in Thailand and who migrated to Thailand between 14th December 1972 and 3rd October 1985 are eligible for permanent resident status (approximately 90,000 people). Their children are eligible for Thai citizenship. It is currently estimated that there are approximately 120,000 people who fall within this category.

People who fall into a third classification of highland people are considered illegal residents and can be forcibly removed from the country. There are currently approximately 190,000 people who are considered to belong to this category. The government has opened a window for citizenship applications from 29th August 2000 up to 29th August 2001, during which time highland people can request that their status be reviewed and apply for citizenship of the Kingdom of Thailand. At the end of this period, the government and National Security Council will use tough measures to force unregistered highland people and other minorities out of the country. The problem for the majority of those people who are, in fact, eligible to receive Thai citizenship is that they cannot produce the appropriate documentation in proof and have therefore had there request and application denied. Such problems are compounded by the ever present hand of corruption at all levels in the citizenship granting process.

Highland Peoples' Civil Movements

The highland peoples' civil movement, supported by the National Hill Tribe Assembly Network and other NGOs, operates at two levels: policy and community levels.

At policy level, the goal of the National Hill Tribe Assembly Network, other NGOs and highland peoples as a whole is to focus on presenting a correct image of highland peoples to the wider society. Lack of information and understanding of the highland peoples in northern Thailand on the part of wider Thai society perpetuates stereotypes and discrimination. It is therefore considered important to reduce ethnocentrism, promote greater acceptance, mutual understanding and to eliminate inequalities through education and information dissemination. The image of highland peoples as destroyers of the forest, non-Thai, a threat to national security and causing the drug problem in Thailand must be changed if any real progress in the rights of highland people are to be made.

By basing the movement systematically on people's participation from the grassroots, dissemination to all other levels must involve a people's alliance working at all levels of society. The movement adopted the concept of decentralized decision-making, effective coordination and promotion of new and innovative ideas.

Work at the *community level* means coordination of highland peoples' networks and the strengthening of the National Hill Tribe Assembly so that it can move forward with powerful and clear objectives. The main strategy is to encourage learning and knowledge exchange between highland peoples' networks in order to increase their power of negotiation by speaking with a strong and unified voice. It is hoped that this will advance freedom of thinking, encourage and uphold dignity and pride and reduce suppression by administrators, politicians and the wider Thai society.

The success of any civil movement depends on the actors involved. It is therefore necessary that highland peoples promote such a movement at the community level. If highland peoples do not have a strong and unified voice, problems such as the right to land and citizenship cannot be solved. At stake is not only the right to land, forest and water but basic human rights and freedoms.

Notes

[1] In this paper the term highland communities is used to refer to the peoples, often termed ethnic minorities, hill tribes or indigenous peoples, living in the mountainous regions of northern Thailand.

[2] The term lowlanders and highlanders are used to differentiate between ethnic minorities who tend to reside in highland areas and the wider Thai population who live at lower levels.

[3] Charernwong S. (2000). "Panha Khwam Kad Yang Lae Kan La Merd Sitti Bukkhon Bon Thee Soong, Amphur Chomg Thong Chiang Mai" (Conflicts and Violations of Highlanders' Rights: A Case of Conflict in Chom Thong District Chiang Mai).

[4] Figure: Centre of Registration Office on the Issuing and Consideration of Person Status in the Household Registration of Highland People; 2543 BE (2000) p. 211.

[5] It must be recognized that the problem of citizenship does not only apply to the highland ethnic communities but other ethnic minorities living in border areas throughout Thailand.

[6] Figure: Centre of Registration Office on the Issuing and Consideration of Person Status in the Household Registration of Highland People; 2543 BE (2000) p. 211.

CAMBODIA

The majority of the people in Cambodia are ethnic Khmer who live mainly in the lowlands of the country. In addition, there are Lao, Cham and people of Chinese and Vietnamese origin. Cambodia is also home to different indigenous highland peoples who live in the hills of the provinces of Ratanakiri, Mondulkiri, Kratie, Stung Treng, Pursat, and Kompong Speu.[1]

Since the onset of peace in the 1990s, previously remote areas have become more accessible. As they are rich in natural resources such as timber, land and wildlife, they attract settlers, logging companies and poachers who encroach on the indigenous highlanders' communal lands and forests.

At the same time, a process of consultation to discuss and respond to indigenous peoples' needs and rights has developed between the Royal Government of Cambodia (RGC), Non-governmental Organisations (NGOs), International Organisations (IOs) and representatives of indigenous communities.

Changes in Access to Natural Resources during 2000-2001

In 2000, illegal logging continued, albeit at a lesser pace than in previous years. Timber is cut for private use or for export to Thailand and Vietnam. In Kon Mon, Bokeo, and Banlung districts in Ratanakiri province, local people are unhappy as the officials appointed to enforce the logging ban turn a blind eye to logging in the area. Indigenous people are also faced with double standards as police officers do not react to large-scale logging but clamp down on local villagers when they want to cut timber for house construction.

In Taveng district of Ratanakiri, the traditional fishery is threatened as people from outside the indigenous villages fish in the river using illegal nets and electric shocks. A fishing concession has been granted under which the whole river is blocked with a bamboo wall, depriving villagers downstream of their fish.

Villagers along the Se San River affected by the releases of water from the Yali Fall dam in Vietnam continue to demand more precise information about water releases, as accidents are still occurring. The Yali Fall dam director sends messages to Ratanakiri provincial authorities one or two days in advance of the planned water releases but communication with the affected villages is not effective.

Land Rights Issues

The New Land Law

In June 2000, the Minister of Land and Urbanisation and President of the Land Conflict Resolution Committee met with Asian Development Bank (ADB) representatives from Cambodia, the Philippines and Australia and NGO and IO representatives to discuss the proposed Khmer version of the draft land law in which some of the most crucial paragraphs from the chapter on indigenous peoples had been left out. It was agreed to maintain the content of the original English text, although slightly altered and not as strongly defending indigenous peoples' traditional land rights as NGOs and IOs had wanted. In July 2000, the Council of Ministers (CoM) approved the revised law. The law has now been sent to the National Assembly for approval, after which the Senate will also need to discuss and agree upon it.

King Norodom Sihanouk publicly backed the inclusion of the needs of the indigenous peoples in the land law and in July granted an audience to five representatives of indigenous peoples from Ratanakiri province who wanted to thank the King for his help and to ask for his support to get indigenous peoples' needs also reflected in the forest law presently being drafted. In addition to assuring his

A Hero logging truck blazes a new through a stretch of forest in Ratanakiri. Photo: IWGIA archive support, the King promised to build a health clinic and a school in Poey commune in Taveng district of Ratanakiri, both of which were inaugurated on 29th December 2000.

Land Deals

On March 23, a Ratanakiri provincial judge ruled against the indigenous communities who have been fighting for two years to keep 1,250 hectares of their ancestral land out of the hands of Phnom Penh army general Noun Phea who has defrauded them. The land was "bought" from approximately 247 Jarai and Tampuan families from Chrong, Chet and Klik villages in Bokeo district. US$35,000 was paid to district officials but the villagers, aside from a package of salt, have received nothing from the land sale. The thumb printing on the agreement was done by only a handful of people and not by all families. And those who signed, most of whom cannot read, said they did not understand that the documents gave away their land. Villagers claim that district officials and a local soldier working on behalf of Noun Phea promised that a school, a new road and water wells would be built if they signed the documents.

The lawyers of the indigenous communities, Ea Sopheap and Yim Simene of Legal Aid of Cambodia, questioned the fairness of the trial, complaining that the judge refused to consider documents brought to the courtroom on the same day. The lawyers declared that they will appeal against the decision in a Phnom Penh court and it is expected that it will be heard within seven months.

This court case is considered a landmark case since its outcome will give a signal as to how developers can or have to behave in future land negotiations.

Forestry

Community Forestry

A number of community forestry management plans have received provincial endorsement all over the country. One example is the handing over of the protection and management of almost 5,000 hectares of semi-evergreen forest – officially within the 60,000 hectare Hero Taiwan timber concession – to the Ya Poey Community Forestry Association, comprised of representatives of six indigenous highlanders' villages in Ratanakiri province, who have lived in and used the forest for generations (*Phnom Penh Post*, 2001).

An ADB team, in consultation with NGO and IO representatives involved in community forestry, prepared National Guidelines for Community Forestry. These guidelines place the right for approval and facilitation of management plans at the provincial level. However, the Department of Forestry and Wildlife (DoFW) of the Ministry of Agriculture, Forestry and Fisheries (MAFF) insists that final decision-making power remains with the Ministry. This makes it much more difficult for indigenous communities to appeal should their request for community forestry management be rejected by the Ministry. The DoFW indicated that it did not intend to apply the community forestry sub-decree until the forest law in preparation was accepted.

The New Forest Law

The draft forest law was developed without significant public participation in order not to delay the process (as was earlier the case with the land law). The draft forest law, as presented by the MAFF, received much criticism from NGOs/IOs, both in relation to content and process.

NGOs/IOs and indigenous peoples have initiated an advocacy campaign to raise the awareness of the importance of forests for rural people's livelihoods and how they have managed the use of forest resources and protected the forests against overexploitation for centuries. The campaign also aims to raise awareness of the impacts and dangers industrial forestry poses to these local use and management systems. Attention is also drawn to the need for a multi-disciplinary approach by departments involved in land use planning (LUP) and that LUP should take place at the provincial level to allow people access to decision-making processes.

The NGO Forum monitors developments at the national level concerning forest law and forest policies development and keeps NGOs informed.

Forest Concessions

The forest concession sub-decree of February 2000 requires the formation of community consultative committees in the areas of forest concessions. These committees need government recognition but a pre-condition is that the committees have undergone training to be provided by the Provincial Forestry Office. In Ratanakiri province, this will be done in collaboration with the NGO "Non Timber Forest Products Project", but the content of the training is still unknown. No training has yet been offered and consultative committees, though formed already, are not yet recognised.

The Cambodian Timber Industry Association, based in the DoFW, is developing concession management guidelines. By November 2001, all concessions need to have an implementation plan for producing a management plan. Social and environmental impact assessments (S/EIA) have to be included. NGOs are informing communities of the S/EIA requirements so that they can prepare themselves.

Access to Governance and Decision-Making

Indigenous people are heavily under-represented in the national and provincial governments. They are mainly represented at the commune and village level. Also, within NGOs and IOs, only a few indigenous people are employed and, of these, only a small number work at programme and management level. This has now caught the attention of the organizations and the governor of Ratanakiri, and several strategies have been identified to give indigenous people more access to institutional processes. These include employment of and capacity building among indigenous people within NGO and government programs, or the introduction of indigenous people's advisory boards for the preparation of important workshops, conferences and similar activities.

However, only a small number of indigenous people complete primary school and very few continue on to secondary or higher education. This limited access to education is due to a lack of schools and teachers and because, previously, parents did not see much value in the education offered as it did not relate to their day-to-day lives. Now attitudes are changing as they see education as important in being able to deal with today's social and economic changes.

The lobbying for inclusion of specific indigenous peoples' needs into the land law at national level was, although based on discussions with indigenous communities at the village and provincial level, done by NGO and IO staff on behalf of the indigenous peoples. Over the past few years, the indigenous highlanders in Ratanakiri province have become more familiar with meetings, workshops and negotiating and their direct involvement in lobbying for indigenous highlanders' issues at the national level could enhance their voice. There are plans to support an indigenous peoples' advocacy group to build relationships and understanding between indigenous communities, government officials and members of parliament by explaining their living situation, culture and specific needs.

Women's Involvement in Decision-Making

Traditionally, village governance consists of the male-dominated village elders' council established by the villagers themselves. In addition to the traditional and government leadership systems, development agencies have introduced a variety of development committees. Although all these committees have female and male representatives, women are in the minority.

Women's input in the traditional and government leadership systems, as well as in development committees, is limited. One of the biggest reasons for women's lack of confidence is that often they do not know the Khmer language very well. This also excludes many women from information and gaining knowledge. The heavy workload of women is an additional and serious constraint to their participation in both meetings and training sessions.

Although there are still important gaps and disparities, workload reduction activities, gender training, confidence and capacity-building activities, along with non-formal education, have resulted in tangible progress in building more equal gender relations in decision-making and in the sharing of the workload. There is also a significant strengthening of women's confidence and capacity to participate in public and economic life.

Indigenous Women's Network Ratanakiri

The Indigenous Women's Network Ratanakiri (IWNR) was created in 1998. The members are now clear on what they want and they plan to develop a strategic plan and to clarify objectives and strategies, as well as the roles and responsibilities of network members. One member attended the International Conference on "Conflict Resolution, Peace Building, Sustainable Development and Indigenous People" in Manila in December 2000. Two members participated as researchers in the UNDP/CARERE gender study to develop a gender strategy for the Community Natural Resources Project.

Indigenous Highlanders Association

In 1993, indigenous individuals in high-level government positions living in the capital of Ratanakiri took the initiative to form an Indigenous Highlanders Association (IHA). In 1995, the IHA was officially registered as an NGO with the Ministry of Interior, although the National Assembly still needs to give its authorization. This initial initiative was not very successful as there was too little communication with the people in the indigenous communities themselves. Recently, one of the initiators requested advice from other indigenous senior level government officials and NGO/IO staff in order to set up a more active and lively association. It was decided to hand over the leadership to "ordinary" indigenous people and to first consult widely with each ethnic group in order to determine the level of support for the creation of an IHA as well as to assess people's opinion, with special attention given to the views of women, young people and the elderly, as to what the goals and functions of such an association should be.

Indigenous Youth

Over the past year, young people also received some attention. NTFP organised a "summer school" for indigenous students on participatory and sustainable development work. In December 2000, a NORAD-funded workshop for indigenous adolescents in Ratanakiri focussed on children's rights.

Note

[1] For more background information, see the chapter on Cambodia in *The Indigenous World, 1999-2000*. Examples come primarily from Ratanakiri province as the author is most familiar with this province.

Sources

Resource persons:

Graeme Brown, Department of Environment, Ratanakiri, Community Forestry Advisor.

Tiann Monie, UNDP/CARERE Land Advocacy Assistant and member Indigenous Women's Network Ratanakiri

Gordon Patterson, Non Timber Forest Products Project, Ratanakiri, Co-ordinator.

Sang Polrith, UNDP/CARERE Provincial Project Manager, Ratanakiri.

References

"Community forest gives hope to hill tribes." *Phnom Penh Post*, January 5-18, 2001.

Minutes of the CAC meeting, Ratanakiri, 02 February 2001

"Court Rules Against Hill Tribes in Ratanakkiri." *The Cambodia Daily*, March 24-25, 2001.

"Hill Tribe's Lawyer To File Appeal Next Month." *The Cambodia Daily*, March 27, 2001.

VIETNAM

Ethnic minorities in Vietnam are mainly indigenous highland peoples. There are 53 recognised minority groups in Vietnam, representing approximately 9.9 million people (13.6% of the population). Of this, almost 8 million reside in the highlands. Only the Chinese (Hoa), Khmer and some Cham minorities live in the lowlands. The 53 recognised minorities do not represent the actual number of cultures and languages in Vietnam. Some groups have been 'amalgamated' into government ethnologies, so the actual number may be 60 or more. Some of the groups live in only one or two villages, and number less than 200 people.

Highland Development and Forest Conservation Policies

The government of Vietnam has many policies and programmes to promote highland development, including infrastructure, forestry, education and health care. But many of these programmes have recorded only limited results. One government policy that has had little success is the resettlement of minority communities and promotion of sedentary farming based on wet rice. Most highland peoples have relied on swidden agriculture systems for hundreds of years but rather than look closely at how these systems work, the government decided they were wasteful or inefficient, and programmes were designed to stop shifting agriculture. In some areas, ethnic minorities have stopped shifting agriculture but this has not always resulted in higher incomes or a better quality of life. In some cases, resettlement involved major lifestyle changes, which the minority groups were not prepared for. Traditional cultural and community structures were damaged, and in many areas this has resulted in social problems such as alcohol abuse, gambling, and so on.

Blaming highland peoples for deforestation through shifting agriculture has also turned attention away from the true causes of deforestation in Vietnam: logging companies, major infrastructure projects like dams, and large-scale cultivation of cash crops such as coffee. Other industrial crops, like eucalyptus, have had negative impacts as well. The root cause of deforestation is the opening up of the country's economy to the market. Logging companies hire local people to cut down the forest, and they offer very high incomes. For example, in one Hmong village in Son La province, a company from Hanoi told the villagers they would build a road for them, so they could sell their corn. The company said they only wanted to cut a few trees in return. Luckily, a local NGO was able to find funds so that the villagers could build a road themselves.

But, in general, even if the government has a policy of protecting the forest, the attraction of money is too great. In most cases, it is lowland Kinh (Vietnamese) people who have the resources to go to the highlands and cut down large numbers of trees.

Another source of deforestation is cash cropping. In the Central Highlands, coffee is now a major crop and it brings in high incomes. In this case, again it is Kinh people from the lowlands who find ways of persuading minority communities to sell land or cut down forest to open up new fields. Some of the areas are protected but people pay off those who are supposed to protect the forest. Only lowland Kinh have enough money to make these types of payments.

Eucalyptus was brought into the country in the early 1990s. It was promoted as a solution for the entire country and it was planted everywhere. In many cases, the villagers stated clearly that they did not want to grow eucalyptus — and some scientists agreed with them. But they had no choice, and the influence of eucalyptus on local knowledge systems was very severe. Eucalyptus releases toxins into the soil preventing other trees or plants from growing. The tree soaks up so much water that agricultural production is affected. In some cases, existing forest was cut down so that this imported tree could be grown. This is what happened near the Swedish-funded Bai Bang paper mill in northern Vietnam. Now, the mistake with eucalyptus has largely been recognised and accepted by the government. But the push for industrial cash crops is still very strong and shows no signs of slowing down.

The resulting impact on biodiversity and indigenous knowledge is very severe. The government approach has been similar to that of many other countries – protected areas and nature reservations are established with the goal of preserving rare species and forested areas. Unfortunately, implementation of these programmes often ignores or completely excludes local people. Indigenous communities have been resettled from protected areas in the belief that they cut down or damage the forest. As mentioned, this often leaves them worse off, and in danger of losing their culture. In general, there is little acceptance of the idea that indigenous people are the best able and most willing to protect forests.

Another government policy is the "five-million acre" reforestation program. This involves a substantial amount of government money for reforestation. But there is no real focus on who is responsible for managing and protecting existing forests. The result is that villagers are planting new trees but existing forest is still being cut at a fast rate. Forest enterprises hired villagers to plant trees, but

Houses of Kinh settlers in Daklak province, Central Highland of Vietnam. Photo: IWGIA archive

In a village of the Mnong Ralam, one of the indigenous peoples of Daklak province. Photo: IWGIA archive

that was all. So the villagers do not have any really sense of responsibility for protecting the areas after they have planted them. They just think they are growing trees for the government, not for themselves.

Gradually, however, some old approaches are being replaced by new programmes that offer greater participation at the local level, and the opportunity for highland people to protect their land. After the period of collective agriculture ended in the 1980s, privatisation of landholdings spread across Vietnam. This has now made its way to the highlands, and often includes forest land. Villagers in many areas are now receiving land use rights certificates for cultivation and forest land certificates, which offer all of the rights associated with full ownership.

Some social forestry programmes, such as a large project funded by the German government's development agency GTZ in Son La province, even offer the chance for villagers to create legally-recognised community forests. Many NGO staff and government forestry officials recognise that this is perhaps the best way to manage and protect forests. However, progress is slow and often not enough attention is paid to working closely with minority people – many of whom are illiterate – in order to make sure they understand laws and policies related to the land. There is insufficient effort to ensure that farmers understand their legal rights once they have obtained land use certificates. Also, apart from a few pilot projects, land certificates are issued only in the name of the male head of household, so women are excluded from the process.

The result is that villagers, particularly women, never really feel that they are responsible for the land, or they think they are powerless to protect forests from outsiders who want to cut down trees.

Education Policy

At the root of this problem are the many limitations in education programmes for highland ethnic minorities. The national policy is to promote the use of the Vietnamese (Kinh) language so that minorities can integrate into surrounding lowland communities. In practice, this means that minority pupils study in a foreign language, so they learn very slowly. Also, the curriculum is not related to their everyday lives, so pupils often lose interest. This is especially the case with female children, many of whom remain illiterate. This has a serious impact on their ability to learn new skills later in life, as participation in most development programmes requires an ability to understand Vietnamese. As it stands, there are only a few pilot education programmes where pupils are taught in their native languages for one or two years, before moving on to Vietnamese instruction.

Political Representation

As Vietnam's ethnic minorities struggle with issues such as cash cropping, land rights and education, one factor that works in their favour is a respectable degree of political representation at the local, provincial and national level. Although many Vietnamese policy-makers do not understand highland issues very well, many commune and district level staff members are drawn from minority groups. There is also representation of ethnic minorities at the provincial and national level. The newly-elected General Secretary of the Communist Party – the highest political office in Vietnam – is a member of the Tay ethnic group, from the north east.

This political representation helps many NGOs, including some local organisations, to focus their efforts on ethnic minority issues. There are many projects in areas such as social forestry and education that offer promising new models for involving minority people in society. However, positive change is limited by the top-down approach of many government officials, and a lack of awareness of highland issues among the majority population.

Massive Protests by Indigenous Peoples in the Central Highlands

In early February 2001, Vietnam's Central Highlands were swept by massive protests on the part of its indigenous peoples. The apparently well-coordinated protests took place in several major towns of Dak Lak and Gia Lai province but were concentrated in Pleiku, the capital of Gia Lai, where an estimated 5,000 protesters took to the streets from February 2 to 6. According to news agency reports, some of the protests turned violent. Government buildings were surrounded, roadblocks set up and telephone lines cut. The government reacted immediately with the deployment of troops, riot police and helicopters. Twenty people were allegedly arrested but no casualties were reported. According to the State-run media, some police were injured and hospitalised.

Only once were foreign journalists allowed to enter the area and phone contact was curtailed in order to prevent local officials, journalists and members of local organizations from talking to the foreign press. The whole Central Highlands has remained completely sealed off ever since.

The government acknowledged in late March that protests had actually started months earlier, in October 2000, when hundreds of young indigenous set up no-go zones to which outsiders were refused entry. The government also admitted that the unrest had actually continued into March, contrary to their earlier proclamations that the demonstrations ceased right after the government intervention. According to other reports, there were already isolated clashes between indigenous people and settlers back in August when about 150 members of the Ede indigenous people attacked Vietnamese settlers in Ea H'leo district of Daklak province.

It has been suggested that the immediate reason for the large protests were fears of increased migration, which spread in late January. According to the rumours, Daklak and Gia Lai province were destined to receive 100,000 of the 300,000 people to be resettled because of the US$ 3 billion Son La hydropower project in North Vietnam. The Central Highlands has already experienced heavy immigration, both State planned and, in recent years, spontaneous which has profoundly changed its demographic composition. At the turn of the century, the plateau and surrounding mountains of the Central Highlands had a population of about 240,000, almost all of them indigenous. Due to the massive immigration of Kinh and indigenous peoples of the North, the number has risen to nearly 3 million, the indigenous accounting for less than one third. Formerly covered by extensive forests, the Central Highlands has become the country's largest coffee-growing area. Most of the good land is now in the hands of migrants.

An additional reason for the protest has allegedly been the government's repression of the Protestant Church, which most indigenous people in the region belong to. According to some reports, the Protestant underground church played a crucial role in organising the protests.

The Vietnamese authorities have accused anti-Communist exiles in the United States of being behind the protests. According to the Public Security Ministry newspaper, the disturbances were caused by agitators working for ex-members of the United Front for the Liberation of Oppressed Races (FULRO, the acronym for its name in French). FULRO is an armed resistance group of the indigenous of the Central Highlands that has fought for self-determination against successive Vietnamese governments from the late 1950s until the early 1990s.

Sources

Agence France-Presse, March 23, 27 2001
BBC News, February 7, 8, 9, 2001
Far Eastern Economic Review, March 1, 2001
Reuters, February 7, 2001
South China Morning Post, March 28, 2001

LAOS

Laos harbours one of the most ethnically diverse populations in Southeast Asia. The largest ethnic group, the Lao, comprise approximately 30% of the 4.8 million inhabitants of Laos (far more Lao live in the Northeast of present-Jay Thailand than in Laos), while the remaining 70% encompass more than 230 different ethno-linguistic groups belonging to four ethno-linguistic super-stocks: the Tai-Kadai, Austro-Asiatic (Mon-Khmer family), Hmong-Mien and Sino-Tibetan (Tibeto-Burman family) (ILO 2000: 3). There are 80 Mon-Khmer groups alone, and 10 new Vietic groups have been identified only recently. The 47 groups used for classification in the last government census are therefore far too crude.

It is these small, non-Lao ethnic groups that are usually referred to as the indigenous peoples of Laos. Officially, these peoples are today called "ethnic groups", "ethnic peoples" or "Lao son phau" ("non-ethnic Lao"). The government has dropped the formerly - among some government officials and other people, however, still very common – geo-morphological classification of Laos' population into "Lowland Lao" (Lao Loum), "Midland/upland Lao" (Lao Thoeng) and "Highland Lao" (Lao Soung).

The Present Ethnic Minority Policy of the Lao Government

The 1991 Constitution provides the general framework of Laos' policy with respect to the different ethnic groups. It provides for equal rights to culture and customs for all ethnic groups, forbids discrimination between ethnic groups and mandates the State to promote unity and equality among them and to implement measures that provide for the economic and social development of all ethnic groups.

The present indigenous peoples or ethnic minority policy was formulated in the "Resolution of the Party Central Organization Concerning Ethnic Minority Affairs in the New Era" of 1992. In a recent ILO report the authors conclude that: "It is in fact difficult to identify specific articles in ILO Convention No. 169 with which Lao policy is in conflict. At a recent consultative meeting convened by the LFNC [Lao Front for National Construction] in September, 1999, where the Convention was introduced to key decision-makers from line ministries and agencies including the Ethnic Minorities Committee of the National Assembly, the attendees voiced their agreement with the contents of the Convention" (ILO 2000: 40). The positive response of the government officials at the consultative meeting organized by the ILO gives reason for hope that the government of Laos will eventually even consider ratifying Convention 169.

The present policy of the Party as outlined in the 1992 Resolution was summarized by the authors of the ILO report as follows (ILO 2000: 23):

1. Build national sentiment (national identity).
2. Realize equality between ethnic minorities.
3. Increase the level of solidarity among ethnic minorities as members of the greater Lao family.
4. Resolve problems of inflexible and vengeful thinking, as well as economic and cultural inequality.
5. Improve the living conditions of the ethnic minorities step by step.
6. Expand, to the greatest extent possible, the good and beautiful heritage and ethnic identity of each group as well as their capacity to participate in the affairs of the nation.

The Resolution goes on to identify essential tasks through which the policy may be achieved. Among others, it calls for, "the resolution of disagreements between members of the same ethnic minority, between ethnic minorities, between ethnic minorities and government officials, soldiers and other citizens" and "states that whenever violations of the policy on ethnic minorities occur these must be immediately resolved by the relevant authority and the offenders punished" (ibid.).

The Resolution further demands "concentration on the expansion of education, culture, health, and other social benefits" through, among other things, expansion of formal primary education, teacher training, researching the writing systems of the Hmong and Khmou, enlarging the health care network "by joining modern and traditional medicine", dissemination of information in remote areas, especially through radio broadcasting in indigenous languages, the appointment of specialist officials who speak minority languages etc.

Somewhat worrying is that while the Resolution calls for the promotion and expansion of the traditional cultural heritage of each ethnic group, it also calls for reducing and eradicating "backward traditions" without specifying what is considered as "backward" (ILO 2000: 24).

Another rather problematic paragraph is the one calling for "increased production and open [channels of] distribution in order to change the 'natural' or 'semi-natural' economic system towards one of production of goods" and its emphasis on the need to reduce shifting cultivation (ILO 2000: 23).

Heuny woman in Ban Chat San resettlement site. Photo: IWGIA archive

Heuny women on a visit to their old village from where they have been forcibly relocated. Photo: IWGIA archive

BEST COPY AVAILABLE

The Resolution provides for a certain degree of recognition of land rights of indigenous communities by calling for a strict and clear policy of land allocation for every family (ibid.). Unfortunately, there is evidence that land allocation has so far been used rather as a means to reduce shifting cultivation than to provide indigenous communities with security of tenure over their traditional agricultural and forest lands.

In order to increase "the level of Party leadership in ethnic minority affairs", the Resolution identifies the need to (a) increase national identity and solidarity among ethnic minorities and to train civil servants, Party members, and soldiers to understand the content of the policy; and (b) to improve the personnel mechanism responsible for ethnic affairs and, at the central and provincial levels, establish a mechanism responsible specifically for ethnic affairs under the Lao Front for National Construction (LFNC). Its central administration was designated advisor to the Party Central Organization and the Government, while at the local level the Party committee should assist the LFNC in carrying out its duties (ibid.: 25).

The LFNC is also given the crucial mandate of coordinating and ensuring the implementation of the policy laid out in the Resolution through:

- researching policies affecting ethnic minorities and disseminating the resolution to the "Political Bureau in order to coordinate with various departments for true implementation";
- following up, evaluating and reporting regularly to the Party Central organization and the government on the process of the policy's implementation.
- The request to all central level agencies to coordinate with the LFNC.

The Resolution is very clear in its critique of past failures and its commitment to an improved policy and a more determined implementation. A few aspects have already been highlighted as being potentially problematic. These are partially linked to already existing government programs, which will be briefly discussed below:

Reduction of Shifting Cultivation and Relocation

In spite of the potentially favourable policy laid out in the party resolution of 1992, some of the current government programs carried out in indigenous areas have proved to have serious consequences for indigenous communities. One of them is the relocation and village consolidation program, which is the program with the most severe impact on indigenous peoples. Contrary to a ministerial statement on 28th April 1992, relocation is still a policy. This was reconfirmed at the 5th party congress in 1996, although it was stated that no "forced relocation" should occur.

The relocation program has existed since the early 1980s and was originally initiated for security reasons (i.e. to relocate former "allies" of the USA, above all, Hmong communities). Since the drawing up of the Tropical Forestry Action Plan (TFAP) of 1990, environmental (forest) conservation is the official underlying rationale. It is suspected that the TFAP made the government realise that it was more profitable for the State to use forests for logging than for shifting cultivation. The consequence is that relocation now targets shifting cultivators.

The aim to reduce shifting cultivation is clearly stated in the Forestry Law of 1996. On the other hand, the Forestry Law provides for a decentralized forest management and, to a certain degree, recognizes customary rights (to small-scale domestic use of forest products, including timber, hunting and fishing). Villages are given the authority to develop their own rules and regulations for forest management, provided that they comply with the general aim of conserving forests. While customary laws, land tenure systems and resource management practices are explicitly recognized (Ministerial Agreement on Customary Rights and Use of Forest Resources, see ILO 2000), they are still subordinate to the national legislation. Activities considered as contradicting the law are non-sustainable activities, which include, among others, some forms of swidden farming.

A total of 300,000 families are considered to be shifting cultivators, which is more than 40% of the rural population (Goudineau, Y.,1997: 15), most of them belonging to indigenous peoples. Since the government has planned to eradicate shifting cultivation by the year 2000, these people are all targeted for relocation. But unlike elsewhere in Asia, the government is not very aggressive in the implementation of this program. Nevertheless, many tens of thousands have already been relocated. Some observers have pointed out that if the program is fully carried out, it will be the world's biggest relocation program. People are supported to make a living from coffee cultivation etc. Wet rice cultivation is, in most cases, not an option simply because there is very little additional land left that is suitable for paddy cultivation.

ORSTOM (Institut Français de Recherche Scientifique pour le Développement en Coopération) on behalf of UNDP and UNESCO has undertaken a study on "Resettlement and Social Characteristics of New Villages" (Goudineau, Y.,1997) covering 67 villages in six provinces of North and South Laos. The report shows that in some villages, up to 30% of the people died from malaria and other illnesses within the first years.

While the government has now acknowledged that relocation programs are highly problematic, and although the official policy is that no forced relocations should take place anymore, it still honestly believes (or tries to appear to believe) that relocation and village consolidation (i.e. grouping small villages together to form a larger settlement) is ultimately good for the people. The argument given is that only in this way can the people be provided with education, health and other government services. The government also sees it as a way of "civilizing" the ethnic minorities, an attitude also reflected in parts of the 1992 Resolution.

Observers in Laos are of the opinion that the government is slowly moving away from the relocation policy. But the situation remains unclear; the government is vacillating on the issue. At present, the problem is that, while central government has a clearer and more cautious policy, the provinces often just ignore it. The "uncontrollability" of remote communities in the thinly populated southern provinces has been mentioned as a possible reason for the ongoing relocation, as in Attapeu province. Another possible reason for ongoing relocation in some provinces could be the interest in having unimpeded access for logging.

On the other hand, no communities have so far been relocated due to the establishment of protected areas. In that respect, the government has a more pro-people approach than in many other countries.

In sum, relocation of indigenous communities for "environmental reasons" is still an option – and a reality - in Laos. It remains the most problematic government program with regard to the rights of indigenous peoples. While there are good reasons to believe that the government is moving away from this policy, still more pressure – from within or by ODAs and international organisations – will be needed to ensure complete abandonment of the program, as well as proper implementation of a non-relocation policy.

Land Rights and the Land and Forest Allocation Program

The Land Law of 1997 provides the legal framework for the allocation of land under the land and forest allocation program. Permanent land use rights (land titles) for land under permanent use (e.g. paddy land or orchards) and temporary land certificates for farming in upland (forest areas), i.e. for shifting cultivation, are given to individuals and households. The management rights over community forests are given to villages.

The actual land allocation takes place at district level. The District Office of Agriculture and Forestry, under the Ministry of Agriculture and Forestry, is responsible for its implementation. As a precondition for getting village land allocated, a land use plan has to be drawn up and submitted to the district government for approval.

The point of departure for land allocation are the existing customary rights. This means that these rights are clearly recognized by the government. Unfortunately, there are several weaknesses and potential dangers in the land allocation program as it is currently practiced.

The problem is that, firstly, people do not know about it and, secondly, the financial means to implement the program is lacking. In many areas, no official village boundaries exist, and therefore in some areas a great deal of encroachment onto indigenous communities' land is taking place.

The most problematic aspect, however, is that the land allocation program also explicitly states the reduction of shifting cultivation as one of its main aims. It is mentioned second out of the three major objectives of the program, which are: 1. Sustainable management and use of natural resources; 2. Reduction and gradual elimination of shifting cultivation; 3. Promotion of commercial production (ILO 2000: 96).

In fact, land allocation is currently the government's main instrument for reducing shifting cultivation. This is done by confining the land area allocated for swidden farming in the uplands. While a total land area of up to 22 ha. (including land for fruit gardens, grazing etc.) per head is possible, the land that can be used for swidden farming is limited and therefore leads to a shortening of the swidden cycle. In the long run, this policy may backfire when, after only a few cycles, people (if not given viable alternatives) will simply be forced to open up new land for cultivation and move on to the now "protected" forest land.

The Lao government has, on the other hand, clearly stated its commitment to a decentralized and participatory approach to resource management and biodiversity conservation. Several decrees and ministerial orders recognize customary rights over land and forests and provide for decentralized, community management of forests. As part of the land and forest allocation process, agricultural land is allocated to households (or private investors for commercial tree plantations) while some forests (three types: water source forest, village forest reserve and utility forest) are allocated for village management (ibid. 2000: 86f).

But the government imposes specific forms of land use determined through zoning (into Resource Management Areas). Community rights over, e.g. "production forests" (forests other than the ones mentioned above) are very limited. They can be opened up for logging and community rights are only recognized to the extent that an agreement has to be made with the respective communities who will receive "community development" aid in return.

In sum: while individual and community rights over land and forests do exist, restrictions on their use are imposed, and "control is wrested away from individuals and communities" (Chamberlain 1995: 41). Which means that the government can grant access to community land to logging companies, for plantations etc.

Hydropower Development

With the opening up of Laos to foreign investment under its New Economic Policy initiated in the 1980s, numerous foreign consultants and multinational corporations came to Laos to investigate the potential for developing large hydropower dam projects. Foreign engineers have long viewed southern Laos, including the Sekong Basin, as an area with considerable potential for large-scale hydropower development. However, the first foreign consultants to conduct detailed field surveys regarding the potential for hydropower in the area since the American War in Vietnam were the Japanese government's bilateral aid agency, JICA. JICA has undertaken a number of hydropower studies in the Sekong, including the recently completed "Sekong Basin Hydropower Master Plan", which envisages building 12 large dams in the Sekong Basin in Laos.

However, no hydropower projects were yet under construction by 1993, when the governments of Laos and Thailand signed an agreement in which the Laotians agreed to sell power-hungry Thailand 1,500 MW of electricity per annum by the year 2000.

Heuny and J'rou Communities Relocated

Since then, the construction of several dams has commenced. Some have been completed, some are still under construction and several others are planned. Due to the construction of the Houay Ho reservoir on the Bolaven Plateau in southern Laos, ten villages in total - including nine Heuny communities (out of a total of 20 communities of the Heuny people) and one J'rou village - have been forcibly relocated to the resettlement site at Ban Chat San. 1,598 people in 421 families have been moved there so far (*pers. comm.*, Lao government officials, July 2000).

It is ironic that, of the ten villages that have been relocated, only one (Ban Nam Han) was situated within the reservoir areas for the Houay Ho and the planned Xe Pian-Xe Nam Noy dams. It is therefore incorrect to assume that the communities had to be relocated to make way for the dams. The reason given for the relocation of the other communities was the conservation of the catchment area. However, the Environmental Impact Assessment for the Xe Pian - Xe Nam Noy dam specifically recommended that the communities should not be relocated to Ban Chat San. Instead, it was suggested that they either be left in their previous locations or moved a little up the mountain to avoid being flooded by the dam reservoirs (Electrowatt, 1996). The project developers and the government, however, did not follow this advice (for more on the relocation of the Heuny communities, see *Indigenous Affairs* 4/2000).

Nakai Plateau to be Flooded

The Nakai Plateau and the adjacent forested mountain in central Laos have been identified as one of the biodiversity hotspots in Indochina. Not only is the area home to a bewildering diversity of plant and animal life but also to indigenous communities speaking 28 different languages. Three of them are hunter-gatherer groups previously unknown to the outside world and who speak languages that are not related to any of the five major language groups found in the area but to Vietnamese spoken across the Annamite chain.

For approximately the last ten years, a logging company run by the Lao military has been logging in an area of 450 square kilometres on the Plateau to make way for the reservoir of the proposed 1,069 megawatt Nam Theun 2 hydroelectric dam.

Contrary to all expectations, the World Bank-funded Panel of Experts, who were hired to provide advice on the proposed US$1.1 billion dam, found the current situation "encouraging" and proposed that the project should be carried out as planned and the World Bank remain involved. Otherwise, they conclude, rural poverty will increase rather than decrease, and the globally recognized biodiversity of the Nakai-Nam Theun National Biodiversity Conservation Area (NBCA) will be degraded or entirely lost. The large reservoir, it is assumed, will represent a barrier that prevents easy access and therefore the further degradation of the NBCA. For the members of the Panel, like Thayer Scudder, a Professor of Anthropology at the California Institute of Technology, known to be an "expert on resettlement", logging and flooding 450 square kilometers of land and relocating 6,000 people is apparently a price worth paying for the conservation of the Nakai-Nam Theun NBCA.

According to Scudder, the 6,000 people to be relocated are "incredibly poor to start with". He believes that they are going to be moved anyway but prefers "to try to improve that resettlement rather than just sit back and criticize it".

Problems connected with the proposed dam have already arisen. The military-run logging company, Bholisat Phattana Khed Phou Doi (BPKP - the Mountain Region Development Company), has already logged several areas outside of the proposed reservoir area, including a proposed community forest area that was supposed to provide an income for evicted villagers. Since a sizeable industry has already been developed to process the timber, the Panel of Experts fear that this industry "may exert strong political pressure to be allowed to log inside conservation areas when their existing log sources are exhausted and before plantation grown timber becomes ready to harvest." This does not, however, diminish the Panel's support for the project. BPKP has also already moved families out of the proposed reservoir area, independently of any planned World Bank resettlement program.

Whether the dam will be built remains uncertain, however, since the Nam Theun 2 Electricity Consortium (NTEC) says it depends on a World Bank US$100 million "partial risk guarantee" covering the commercial loans. Without such a guarantee, commercial banks will not put money into a financially risky scheme. NTEC hopes that the World Bank will agree to the loan-guarantee in the next few months.

Sources

Chamberlain, James R., Charles Alton, Arthur G. Crisfield. 1995. *Indigenous Peoples Profile. Lao People's Democratic Republic.* Prepared for the World Bank. Care International, Vientiane.

Goudineau, Yves. 1997. *Resettlement and Social Characteristics of New Villages. Basic needs for resettlement communities in the Lao PDR.* An Orstom Survey. Vientiane: UNDP.

Khamin, Nok. 2000. "More Trouble for the Heuny." *Indigenous Affairs 4/2000.* Copenhagen: IWGIA

Lang, Chris. 2001. "Cutting the Trees to Save the Forest." *World Rainforest Movement Bulletin* Number 4, 2001. Montevideo

ILO 2000. *Policy Study on Ethnic Minority Issues in Rural Development. Project to Promote ILO Policy on Indigenous and Tribal Peoples.* Geneva: International Labour Office.

Steps Towards a Political Dialogue?

On January 9, a UN spokesperson announced after the visit of United Nations special envoy on Burma, Razali Ismail, that Lt. General Khin Nyunt and National League for Democracy (NLD) leader Daw Aung San Suu Kyi had been engaged in a direct 'dialogue' since October. On the following day the NLD confirmed that it was engaged in talks with the State Peace and Development Council (SPDC) and that some progress had been achieved. Prior to this, Lt. General Khin Nyunt met NLD Chairperson Li Aung Shwe on September 14.

While the talks have been described by certain quarters as a "dialogue", it is important to note that the current circumstances give no indication that these talks fulfill the conditions needed for a genuine 'dialogue'.

The talks raised expectations, but very little is known about their nature, extent and content. There are many reasons for caution about the outcomes and the time frame for change. Comments have been made by a number of important players who have indicated that change will come slowly and the outcome will not be a "Western-style democracy".

It is yet to be seen if the SPDC is attempting to manipulate the international community for the removal of sanctions and the resumption of aid and loans or if they are actually willing to engage in a sincere discussion about the future welfare of the peoples of Burma.

While some exiled activists have hailed the talks as "historic", the NLD's position appears to be one of cautious optimism. The NLD has refrained from making public statements about the content or progress of the talks apparently in order to build up goodwill and avoid offending the regime. However, it is speculated that the NLD leadership has its own timetable for outcomes, possibly focused on the release of political prisoners, the ability to exercise its rights as a legally registered political party, the cessation of human rights violations against ethnic nationalities and joint cooperation for development projects.

Despite the hype and excitement, the 6-month long talks at this stage have not delivered any substantive outcomes apart from the release of a limited number of political prisoners, all arrested shortly before the dialogue process. The Central Executive Committee of the NLD (CEC) have received particular attention being twice released from house arrest and detention in government 'guesthouses'.

The talks are presently not official and many believe that only the Khinn Nyunt faction is represented. There have been a number of unconfirmed rumours that Senior General Than Shwe and General Maung Aye were involved in some of the talks at the early stages. Later rumours suggest a split between the factions, with Maung Ave opposed to the dialogue. These rumours increased after the February 19 helicopter crash that killed Secretary No. 2, Lt. General Tin Oo who was in the Maung Aye faction, with many seeing the death as an assassination by the Khin Nyunt faction. There have even been speculations of a coup and arrests of high ranking military officers including Maung Aye. The veracity of these reports or their relationship to the talks is presently unknown. However, Khin Nyunt has publicly denied rumours of a split in the military. There is not just the issue of splits in the upper echelons of the military, but increasing discontent in the lower ranks.

It is not clear at this stage, which NLD representatives have been involved in the dialogue. There was at least one meeting between U Aung Shwe (then under arrest in a 'guest-house') and Lt. General Khin Nyunt. Accompanying Khin Nyunt at the September 14 meeting was U Khin Maung Win, Deputy Foreign Minister. Aung San Suu Kyi is one of the key protagonists in the talks, with perhaps NLD chairperson U Aung Shwe and NLD Secretary U Lwin. The SPDC-imposed house arrests on NLD leaders they are supposed to be in dialogue with has aroused suspicions of the true intentions of the regime. While the NLD leaders have been allowed a few appointments with visiting diplomats, free access to other democracy leaders and ethnic nationality groups has yet to happen.

Participation of Indigenous Peoples' Representatives not Confirmed

Information is scant about the possibility of other representatives involved in the talks. Comments from a range of exiled groups suggest that 'representatives' of minority ethnic groups [Burma's indigenous peoples] are not involved at this stage. The perceived main initiator of the 'dialogue', United Nations special envoy on Burma Razali Ismail, has met with some SPDC-endorsed 'representatives' of minority ethnic groups during his visits to Burma.

Rumors exist that some 'representatives' have been involved in discussions with SPDC officials outside of Burma, but this has not been confirmed. Phado Mahn Sha, the Karen National Union (KNU) Secretary said that there was a meeting between the liaison officers of the KNU and SPDC but that there is no possibility of a dialogue at the moment. A representative of the Karenni National Progressive

Party (KNPP) stated that a letter from the SPDC asked them to join with the SPDC and engage in development activities and in talks. The non-inclusion of 'representatives' from ethnic nationality groups will be a source of continuing conflict if the 'dialogue' brings about some 'resolutions' between the SPDC and the NLD.

This report has been adopted from ALTSEAN Burma Report Card Sept. 00 - Jan. 01 "Burma: Tentative Steps", which we herewith gratefully acknowledge.

Continuing Military Operations: Tens of Thousands of Indigenous People Displaced

Throughout 2000, the Burmese army continued its crackdown on the pro-democracy movement. Government counter-insurgency operations, forced labour, forced relocation, extra-judicial executions, and other gross human rights abuses continued against several indigenous opposition groups. People have been relocated on a large scale, homes were frequently burned, crops destroyed, and belongings looted. At the relocation sites, villagers had to contribute up to 15 days a month of forced labour. So far, ceasefires have been signed with 13 of the 28 indigenous resistance groups. The Karen guerrilla has experienced heavy losses during the past years.

According to the *Human Rights World Report 2000*, tens of thousands of indigenous people in the conflict areas of central Shan state, Karenni state, Karen state, Mon state, and eastern Tenasserim division are being kept in forced relocation sites. They faced curfews, looting, and restrictions on movement at the hands of the Burmese army. Shan refugees escaping to Thailand reported that strict curfews had been implemented in Burmese government relocation sites forbidding Shan villagers from leaving their homes between dusk and dawn and, in some instances, prohibiting speaking and imposing a strict lights-out policy. Tens of thousands of other villagers in eastern and southeastern Burma remained displaced in the forests or in areas contested by the army and insurgent groups.

More than 2000 indigenous people have been displaced by army persecution in Kler Lwe Tu district since November 2000 alone. They fled to the east of Mu Traw district in Karen state. Some of them continued and sought shelter across the border in Thailand. The "Scorched Earth" operations of the Burmese Army was directed against those villagers hiding in the jungle with the intention to eliminate all those found in the military declared free fire zone. They were shooting anyone on sight and destroyed all crops and food supplies found.

Sources

Human Rights Watch World Report 2000.

Internally Displaced peoples News. Issue 6, February 2001.
Institute of Peace and Conflict Studies: *Armed Conflicts Report 2000*. (www.ploughshares.ca/ CONTENT/ACR/ACR00/ACR00.html).

Massive Transmigration of Wa to Shan State

In an attempt to take control of narcotic production centres along the Thai-Burma border, the Burmese-backed United Wa State Army (UWSA) moved thousands of soldiers and civilians into areas formerly controlled by the Shan people. The SDPC reported the relocation of tens of thousands of mostly Wa poppy farmers to the Thai border as a "drug eradication effort". Thai and international anti-narcotic officials believe that the military junta is covertly supporting drug production by the Wa and Kokang ethnic groups. There are reportedly plans to relocate 50,000 households from the Wa region in the north to the Thai-Burma border in Shan State. At the end of December it was estimated that between 15,000 and 25,000 households have been relocated. In addition to the Wa, eight hundred Kokang families, neighbours of the Wa, have been reported to be relocated from northern Shan state near the China border to the South.

Sources

ALTSEAN *Burma Report Card* Sept. 00-Jan. 01 "Burma: Tentative Steps".
Burma Alert, Vol 12:5.
Human Rights Watch World Report 2000.

ILO Criticized Continuing Practice of Forced Labour

The SPDC failed to put a stop to its use of forced labour for infrastructure development, the construction of Buddhist structures, maintenance of military camps, and portering for army patrols. A delegation from the International Labour Organization (ILO), visited Rangoon and other areas at the SPDC's invitation from May 23-27, shortly before the June annual conference of the ILO. In its report on the visit, the ILO again called for the SPDC to cease the use of forced labour, repeal or amend legal provisions for forced labour in the Village and Towns acts, monitor compliance, and penalize those who employed forced labor. Burmese Minister for Labour Maj. Gen. Tin Ngwe wrote a letter dated May 27 to the ILO's director-general, stating that the SPDC leaders "have taken and are taking the necessary measures to ensure that there are not instances of forced labor in Myanmar." The ILO conference, however, concluded that the SPDC had failed to end the practice and gave the SPDC until November 2000 to institute reforms or suffer possible sanctions. On October 19, an ILO delegation travelled to Rangoon to assess whether forced labour was still in use.

Source

Human Rights Watch World Report 2000.
(www.ploughshares.ca/ CONTENT/ACR/ACR00/ACR00.html).

NAGALIM

Civil Society Initiative

In March 2001, at a two-day Convention in Kohima, in the present Nagaland State of India, civil groups from India, Kashmir and Nagalim called for the restoration of basic human rights in the Naga areas. Declaring that they were "convinced that the overwhelming desire of the Naga people is to live in dignity and freedom, which has been denied them for over 53 years", the delegates reiterated the call for a peacefully negotiated settlement.

In preparation for this historic Convention, the delegates toured the Naga areas extensively, meeting a cross-section of the people including Indian military and civilian officers. After a careful study of the information gathered from the tour, the Convention concluded that all the draconian laws, including the Armed Forces Special Powers Act, National Security Act, Nagaland Security Regulation, 1962, and Unlawful Activities Prevention Act, should be withdrawn. Furthermore, the government of India should ensure withdrawal of all cases against members of the Naga National Movement. They urged the government of India to fulfil, without further ado, its commitment to hold unconditional talks at the highest level. Expressing concern over the partial observance of the cease-fire, the Convention called on the NSCN (IM) and the Indian government to honour the cease-fire to the letter and the spirit.

The Kohima Convention marks a turning point in the civil society initiative for a just peace in South Asia. It firmly sets the ground for extending the role of civil society in peace processes. The civil groups are now in the process of constituting a "People's Commission", comprising eminent persons from Naga areas and from India to look into all violations of the democratic rights of the Naga people as well as to investigate how scarce resources meant for the State of Nagaland have been squandered by various agencies.

India's "Peace Offensive"

Naga villages and towns are swarming with Indian soldiers carrying "development projects" in their rucksacks. The mission, code named "Operation Good Samaritan" includes anything from building schools, churches, playgrounds, to health care and education tours. Coming from a country with chronic poverty, corruption and caste segregation, this sounds profoundly revolutionary, apart from a number of cruel facts:

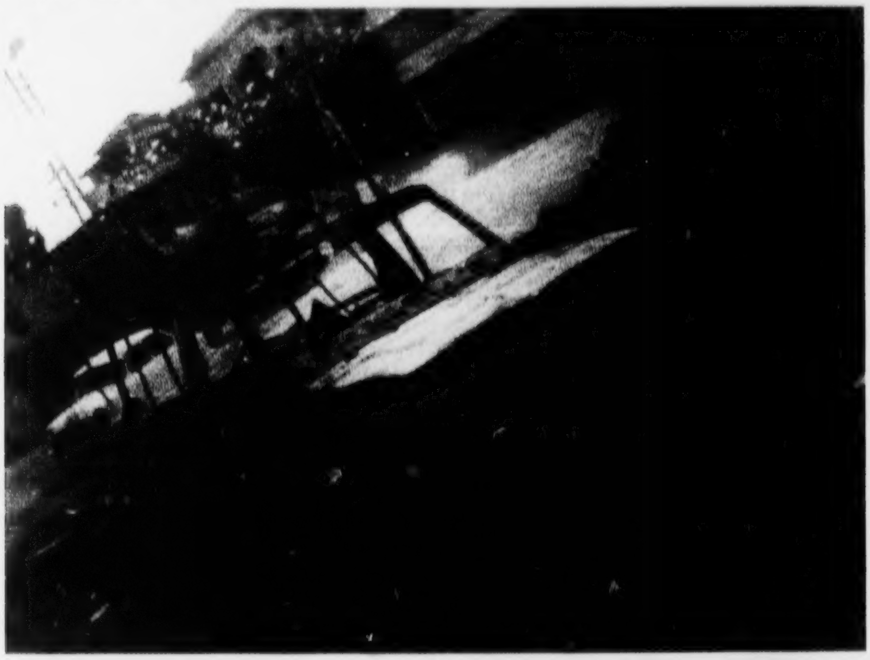
a) The proponents are part of the Occupation Army that continues to suppress the fundamental human rights of the local people;
b) The Army is taking over the few remaining State functions handled by the civil administration, which is a clear violation of the Indian Constitution;
c) The government has shown little concern for the homeless millions crowding the city streets and railway platforms in India. "At least a third of India's people live in the direst of poverty, with millions sleeping on city streets. Delhi just announced it will acquire a nuclear submarine and deploy sea-launched ballistic missiles to complement its air and missile-delivered nuclear forces" (Eric Margolis, *The Ottawa Sun*, March 26, 2001).

Indian leaders and military officers are proudly speaking of this operation as a "peace offensive". However, other intentions may stand behind the initiative. Through "Operation Good Samaritan", the army is actually able to freely interfere in people's lives, to disorient them and then co-opt and assimilate them. The Indian authorities fully understand that the Naga sense of dignity, self-respect and responsibility is rooted in their traditional self-sufficient community-based way of life. The "peace offensive", it appears, is an attempt to cripple this.

Operation Good Samaritan goes hand in hand with raising more roadblocks and military posts inside the villages. People passing by the army post or roadblocks are stopped, searched and made to explain their reason for passing the place. Harassment at the roadblocks and army posts makes people reluctant to move around. In this way, the Indian soldiers intentionally disrupt the daily activities of the people and the flow of essential goods between the villages. The Indian security forces have killed about 20 cadres of the Naga resistance army over the past twelve months. Most of these Nagas

Indian army camp in the middle of Kohima, capital of "Nagaland State". Photo: IWGIA archive

The aftermath of an Indian army operation. Photo: IWGIA archive



were killed while travelling unarmed.

At the political level, Indian leaders continue their tactics of ambiguity and self-contradiction. In the beginning, Naga elders gave them the benefit of the doubt. However, it has now become clear that the Indian leaders have merely been playing for time.

After all this, it should not be difficult to understand that the Indian State has taken a very dim view of civil society's initiative at strengthening the peace process and time and again it has attempted to put it down. The security forces and undercover agents have stepped up harassment of civil society members in the north east of India. This includes frequent checks by the military aimed at restricting their movements, constant disruption of communication lines and maintaining secret files on the activists.

This was confirmed by the Indian Minister of State for Home Affairs on April 24, 2001 when he told Parliament that his Ministry had blacklisted six NGOs in the north east for having links with militant outfits and that a close watch was being kept on their activities (*The Assam Tribune*, April 25, 2001). Several Members of Parliament from the Hindu Militant Party of the Home Affairs Minister used the occasion to further attack NGOs in the north east, even accusing them of channelling funds to the "insurgents". Two of the Naga civil organizations spearheading the human rights movement, the Naga Peoples Movement for Human Rights (NPMHR) and the Naga Student Federation (NSF), topped the blacklist. Other NGOs listed alongside them are: the Manad Adhikar Sangram Samiti (MASS) based in Assam, the North East Co-ordination Committee on Human Rights, the North East Indigenous Peoples Forum, and the All Manipur Students Union (AMSU), based in Imphal.

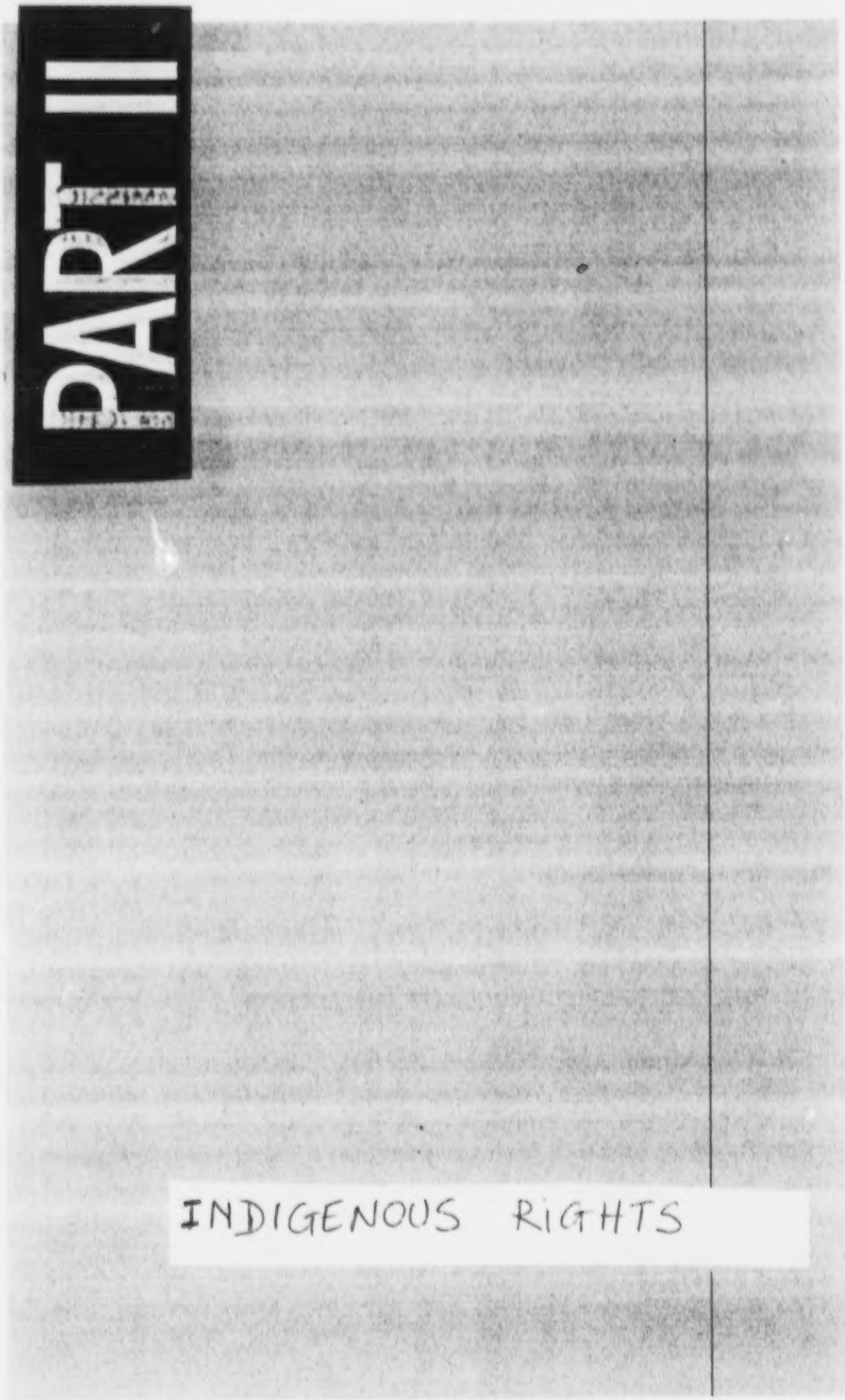
The Minister admitted that these NGOs were not themselves directly engaged in activities of open support or promotion of militant groups but he emphasised that some of these NGOs had been seen to be championing the cause of self-determination for the indigenous peoples, and organising protest actions to condemn the alleged harassment and atrocities against militants and the public on the part of the security forces.

Naga Leader Muivah Excluded from UNHCR Protection

One of the longest serving leaders of the freedom movement, Th. Muivah, has been excluded from UNHCR protection. Th. Muivah's application for protection was rejected by the UNHCR on the basis of a "report" that he had committed "war crimes and serious non-political crimes" (the UNHCR has failed to provide the source of this "report", let alone the details). This has caused concern in human rights circles in South Asia. They have urged the UNHCR to review its decision. The NSCN (I-M), the main national resistance organisation of the Naga people, of which Th. Muivah is the General Secretary, has never been accused of terrorist crime by any recognised NGO. In a letter addressed to the Director, Bureau of Asia Pacific, UNHCR, Geneva, the General Secretary of the South Asia Forum for Human Rights (SAFHR), Mr.Tapan K.Bose has conveyed that "the decision of the UNHCR to 'exclude' Mr. Muivah on grounds of 'war crimes' came as a rude shock to many of us in the human rights movement in South Asia; many of us feel that the decision to 'exclude' Mr.Muivah on the grounds of 'war crimes' was taken on the basis of insufficient information and inadequate evidence". In order to assist the UNHCR, the General Secretary of SAFHR gave the following information in his letter: "The late Jaiprakash Narayan, the respected Gandhian leader of India, had led a Peace Mission to Nagaland in the sixties. He is on record having described the Naga movement as 'most certainly a struggle for national freedom'. Lt. General F.A. Vyas of the Indian Army, who was in charge of the counter insurgency operations in Nagaland, has said, 'Naga insurgents never adopted terror tactics'. (1989, *The Search for Security*, Dehra Dun, Natraj Publishers, P.126.) Mr.Murkot Ramuny, an Indian security expert, in his reports had admitted that, 'The Nagas do not kill civilians'. Nagaland's former Director General of Police, Mr. Chaman Lal in an interview with the Kohima based newspaper *Naga Banner* on November 26, 1994 had commented, 'In Punjab it was terrorism while in Nagaland it is insurgency. And we have to distinguish between the two. We are here not to end insurgency. Nagaland's is a political problem and it has to be solved politically'. In the mid nineties General Shankar Roy Chaudhury, then Chief of the Indian Army had urged the government of India to hold political dialogue with the Nagas."

The legal restriction on Muivah's movement (he is on bail in Thailand) and the threat of his deportation to India have gravely hampered the peace process in the region. The peace talks between India and Nagalim have been stalled since the arrest and detention of Muivah in Thailand in January 2000.

PART II



INDIGENOUS RIGHTS

BEST COPY AVAILABLE

UNITED NATIONS

REPORT ON THE 6TH SESSION OF THE COMMISSION ON HUMAN RIGHTS WORKING GROUP ON THE DECLARATION ON THE RIGHTS OF INDIGENOUS PEOPLES

On 3 March 1995, the Commission on Human Rights (CHR) decided to establish an open-ended inter-sessional working group with the purpose of elaborating a draft Declaration "*considering the draft contained in the annex to resolution 1994/45 of 26 August 1994 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities entitled 'Draft United Nations declaration on the rights of indigenous peoples'*" (CHR resolution 1995/32). The 6th session of the CHR Working Group (CHRWG) was held in Geneva from 20 November to 1 December 2000. This report seeks to describe the debate at the 6th session (CHRWG6), to evaluate movement in positions of particular delegations, and to assess the progress, if any, in building consensus in relation to the Declaration.

Meetings and Attendance

At its 6th session, the CHRWG held 8 formal and 8 informal plenary meetings, and one informal meeting. The session was attended by more than 300 people, including representatives of 71 indigenous and non-governmental organisations, and 43 governments.

The following United Nations member States were represented at the session: Argentina, Australia, Bangladesh, Belarus, Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Ecuador, Egypt, Estonia, Finland, France, Germany, Guatemala, India, Indonesia, Japan, Latvia, Malaysia, Mauritius, Mexico, Morocco, Nepal, New Zealand, Norway, Pakistan, Panama, Peru, Philippines, Russian Federation, South Africa, Spain, Sweden, Togo, Ukraine, United Kingdom of Great Britain and Northern Ireland, USA, Uruguay, Venezuela. In addition, the non-UN members Holy See and Switzerland were represented.

BEST COPY AVAILABLE

Chairperson

For the second year, Mr Luis-Enrique Chavez of the Peruvian Mission to the United Nations at Geneva was elected Chairperson-Rapporteur of the CHRWG. In a joint statement made on 20 November 2000 at the commencement of the 6th session, the Indigenous Caucus proposed the appointment of Mr Wilton Littlechild of the International Organization for Indigenous Resource Development as indigenous Co-Chair. On 23 November, Chairperson Chavez responded to the proposal, stating that indigenous co-chairpersonship would be allowed only in informal sessions., Chairperson Chavez referred to a memorandum produced by the Office of Legal Affairs at UN Headquarters in 1999 in response to a request for a legal opinion as to whether the rules of procedure allowed the CHR's ad hoc working group on a permanent forum for indigenous people to nominate a representative of an indigenous organisation as co-chairperson. That memorandum provided:

> *"Pursuant to rule 24 of the rules of procedure of the functional commissions of the Economic and Social Council, the rules of procedure of the Commission shall apply to the proceedings of its subsidiary organs in so far as they are applicable. In its relevant part, rule 15 provides 'the Commission shall elect, from among the representatives of its members, a Chairman, one or more Vice-Chairmen and such other officers as may be required'.*
>
> *As the Bureau must be elected from among the representatives of the members of the Commission, rule 15 therefore precludes the possibility of nominating a representative of an indigenous organization as a chairman, vice-chairman or any other officer. Moreover, it should be noted that rule 15 explicitly provides for a Chairman. The rules of procedure therefore also preclude the possibility of co-chairmen."* (E/CN 4/1999/83, par. 9)

Report

As with reports of previous sessions of the CHRWG, the report of the 6th session contains a record of the general debate and the debate which took place in formal plenary meetings. The debate which took place in the informal plenary meetings is reflected in summaries of the Chairperson-Rapporteur. As with reports of previous sessions, paragraph 4 of the report of the 6th session explains that the expressions "indigenous peoples" and "indigenous people" are used without prejudice to the positions of particular delegations, where divergence of approach remains. As with the report of the 5th session, paragraph 5 of the report of the 6th session provides:

> *"It is noted by indigenous representatives that all indigenous representatives and some Governments could accept the expression "indigenous peoples" as used in the current text of the draft declaration."*

As at previous sessions, the CHRWG was suspended for two meetings to enable preparation of the report for adoption at the final meeting. There were significant technical problems with the draft report. For example, Mexico complained that paragraphs 21 and 54 of the draft report did not properly reflect the statements made on behalf of the Mexican delegation. This was of particular concern in relation to the detailed Mexican statement on the core concept and sensitive subject of self-determination. Argentina, Bangladesh, China, Cuba and Pakistan expressed concern that particular interventions on self-determination and/or process were either nowhere to be seen or inaccurately and incompletely reflected in the draft report. Brazil commented on the many technical errors in Annex 1, consisting of amendments proposed by Governments for future discussion. The Chairperson asked that proposals to improve the text be submitted to the Secretariat within 14 days. As at 15 April 2001, there is no evidence that any such improvements have been reflected in the report posted on the web-site of the Office of the High Commissioner for Human Rights.

During the adoption of the draft report, several States made procedural interventions which made clear how they are generally disposed towards the Declaration. For example, several proposals by indigenous participants to recast particular words to reflect more accurately the debate which actually took place were opposed by the UK. One such instance related to paragraph 5, which is cited above.

After the UK opposed the proposal of an indigenous representative to replace "some Governments" with "most Governments", the Chairperson agreed to retain the language of "some Governments". Another instance concerned paragraph 103 which records indigenous perceptions of the discussion on article 1. The UK again opposed an indigenous proposal to introduce into this paragraph the following language: "They further noted that most States said they could accept the original language of article 1." On this occasion, the Chairperson commented that such language reflected the perception of indigenous participants, as well as his own perception, that such perception was not unjustified, and that it was reasonable that it be reflected in the report. After hearing an intervention by the USA against the indigenous proposal, and an intervention by Denmark in support, the Chairperson accepted the Danish proposal as most accurately reflecting the correct nature of the debate. Numerous technical points were taken during the adoption of the report by Australia and the USA.

Organisation of Work

At the first meeting of the 6th session, the Chairperson-Rapporteur gave a brief summary of his consultations on the organisation of work. It was proposed to conduct a general debate on the different aspects of the process in which the CHRWG is involved, followed by a general debate on substantive aspects of the Declaration, such as self-determination, land rights and natural resources. It was proposed then to focus on articles 1, 2, 12, 13, 14, 44 and 45.

Working Methods

The 6th session saw the continuation of the practice, begun at the 5th session, of regular meetings amongst States in an effort to narrow their differences on text. This practice was again the subject of trenchant criticism by indigenous participants. In a joint statement made on 20 November 2000, the Indigenous Caucus stated:

> *"The closed meetings which have resulted in governments providing alternative texts are in violation of the principles established in the Commission on Human Rights resolution 1995/32, which provides for the full and equal participation of Indigenous Peoples."*

Accordingly, the Caucus proposed the revision of the provisional programme to allocate time for discussion of process, in particular the full and equal participation of indigenous peoples. Despite a lengthy debate on process, summarised below, indigenous participants did succeed in preventing the institutionalisation of intergovernmental meetings and proposals for alternative text. The result is evident in Annex 1 to the report of the session (UN Doc E/CN 4/WG 15/CRP 4), entitled "Amendments proposed by Governments for Future Discussion". Annex 1 reproduces proposals in relation to articles 1, 2, 12, 14, 44 and 45, tabled at the 6th session, as well as proposals in relation to articles 15, 16, 17 and 18, tabled in 1999 at the 5th session.

At the same time, it was apparent that States are participating in the intergovernmental meetings with varying degrees of enthusiasm, and accordingly identify with the outcomes to varying degrees. For example, each of the working papers on articles 1, 2, 12, 13, 44 and 45 contains the comment *"Some states can accept the article as originally drafted."* In the course of informal plenary discussion, numerous State delegations stated that they could accept a particular article as drafted, but in the interest of reaching consensus were willing to consider proposals to alter the text.

Throughout the 6th session there were problems with discussion papers not being ready in sufficient time to enable participants to consider their often detailed and complex content, to consult in relation to them, and to prepare statements in response. For example, valuable meeting time was wasted as the Chairperson declined to open the debate on article 2 as there was no working paper before the CHRWG. Indigenous representatives saw no reason why there could not be a debate on article 2 as drafted. However, the Chairperson adjourned the meeting, stating that debate would be premature in the absence of concrete proposals.

Particular problems arose as discussion papers, drafted in English, were not immediately translated into Spanish, French, Russian and the other languages spoken by participants. All discussion papers appeared first in English and only subsequently in Spanish and French. Discussion of article 14 was disrupted because the discussion paper was available only in English. Similarly, the discussion paper on article 13 was produced only in English. These difficulties not only emphasised that the redrafting process is being principally driven by the Anglophone CANZUS bloc (Canada, Australia, New Zealand, USA), but also placed non-Anglophone participants at a considerable disadvantage. The difficulties faced by non-Anglophone indigenous delegations in undertaking a considered analysis of proposals was manifest.

General Debate

Process: Interventions of State delegations

The general debate began with interventions on process in the CHRWG. In this general debate, Switzerland stated that participants should avoid a text without any substance, and that the final text must not represent any weakening of the current text. It was also important to avoid a sterile debate on the alleged need for a definition of indigenous peoples. New Zealand referred to the importance of genuine dialogue and open and inclusive deliberations. At the same time, New Zealand recognised the importance of indigenous peoples and States meeting separately in informal sessions, with all participants continuing to negotiate in good faith. The Russian Federation remarked that the present text was unacceptable to virtually all State delegations, and that States were unable to work to reach agreement on text in informal plenary sessions. It was time to get down to drafting text, starting with easy articles and moving to more difficult concepts.

Canada expressed concern that half way through the International Decade for the World's Indigenous Peoples little progress had been made in the CHRWG. The purpose of the closed meetings was to bring governmental positions closer together so that indigenous representatives were not confronted with a wide variety of proposals. According to Canada, the time had come to ask indigenous peoples to look at alternative texts to see whether agreement might be reached. Cuba noted that it had never previously attended a meeting at which there were so many separate meetings of governments and NGOs. Cuba did not want a Declaration which reflects the status quo, and urged greater flexibility in the negotiations. Australia referred to the "significant changes" needed in order to arrive at a document which could go forward.

Norway maintained the belief that adoption of the Declaration by consensus would still be possible. This would most likely not be as currently drafted, although agreement should be possible in relation to the structure and most articles as currently drafted, or with minor amendments. Mexico referred to dialogue as the *sine qua non* of success, noting that a critical point had been reached in the process with many States worried that dialogue is not occurring and that sperate blocs have emerged. According to Mexico, the negotiations in relation to the Permanent Forum demonstrated that progress was possible where negotiations were conducted in good faith and with transparency. Guatemala stated that many State delegations considered the text a good text to which they could subscribe without any change. Denmark proposed that indigenous representatives be invited to be present during intergovernmental meetings.

Process: Interventions of indigenous delegations

In their contributions to the general debate on process, numerous indigenous representatives commented upon the lack of transparency resulting from separate meetings of States. Indigenous participants were presented with drafts without any information as to the origins of, or extent of support for particular proposals. As a result, they were unable to identify which States had particular problems with the text, and there was no opportunity to engage in direct dialogue with those States. Numerous representatives stressed that any such meetings should not be held behind closed doors nor in authorised meeting time. Work behind closed doors was not conducive to dialogue and took participants further away from the understanding and consensus which are necessary if the Declaration is to be proclaimed by the General Assembly and make any difference in the lives of indigenous peoples.

Many representatives stressed the need for the full and equal participation of indigenous peoples in all aspects of the CHRWG's work, including in developing the work plan, during sessions, in decision-making, in the right to vote, in preparation of the report, and at all inter-governmental meetings. Indigenous representatives had consistently emphasised the importance of flexible, frank and consensual methods of work. Accordingly, they had watched with dismay the development of adversarial methods of work, and the polarisation of indigenous and State delegations into separate and opposed blocs.

Several indigenous delegations, including that of the Saami Council, stressed the need for an approach to consensus in accordance with standard UN practice. Reference was made to ECOSOC resolution 1835 (LVI) of 14 May 1974 which defines consensus as general agreement without a vote, not necessarily with the agreement of all. Reference was also made to a 1976 UN Legal Opinion which defines consensus as every effort to achieve unanimous agreement but with those dissenting placing their concerns on the record (UN Doc ST/LEG/12 1976). It was said that if normal UN practice in relation to consensus were applied in the CHRWG, numerous articles would already have been adopted by consensus. Several delegations suggested that the impasse in relation to consensus might be overcome if the Chairperson were to ask those States which must dissent from the general trend to note their reservations, but not to block the consensus needed to move forward with the adoption of particular provisions of the Declaration.

Several indigenous participants commented upon the failure of States to respond to indigenous representatives' arguments in defence of the Declaration in terms of international law and theory, and consistency with standards articulated in other instruments. State delegations had largely ignored this analysis of international norms and practice. Several indigenous speakers commented on the disappointing failure of States to acknowledge the work of the UN's independent human rights treaty bodies which provides an important line of defence in efforts to advance support for the Declaration.

A representative of African indigenous peoples regretted the lack of African governments in the meeting. Indigenous delegations from

Australia had "*registered with grave concern the statement by the Australian Government concerning the 'significant changes' needed to arrive at a document which can go forward. Such statements surely justify the very real fears of Indigenous participants in relation to States' intentions to dismember completely the existing text.*"

Numerous delegations, including the Inuit Circumpolar Conference (ICC), the Saami Council, the Indian Law Resource Center, the Aboriginal and Torres Strait Islander Commission (ATSIC), National Secretariat of Torres Strait Islander Organisations, National Aboriginal and Islander Legal Services Secretariat, Indigenous Woman Aboriginal Corporation and the Foundation for Aboriginal and Islander Research Action reiterated their preparedness to consider changes which strengthen the text and are consistent with the principles of equality and non-discrimination, subject to unqualified recognition of the right of self-determination and collective rights and use of language of indigenous peoples in the Declaration. The representative of ATSIC noted that since those criteria were first proposed, changes had been put forward, without any justification, which had obscured the clarity of and, weakened the existing text. There had also been the retrograde bracketing of the term indigenous peoples at the insistence of only a few State delegations.

Self-determination, land rights, natural resources: Interventions of indigenous delegations

In their interventions in the general debate on self-determination, indigenous representatives again affirmed the right of self-determination, as formulated in article 3, as the fundamental provision in the Declaration. Numerous indigenous representatives expressed concern about initiatives to develop alternative wording for article 3. It was stated that the CHRWG had no mandate to lower international standards as applied to indigenous peoples. The right of self-determination was said to be firmly established in international law, including in the Charter of the United Nations, common article 1 of the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR), and the Vienna Declaration and Programme of Action, adopted by the 1993 World Conference on Human Rights ("the Vienna Declaration"), as well as having attained the status of ius cogens, or a peremptory norm of international law from which no derogation is permitted. The representative of the International Organization of Indigenous Resource Development stated that to negotiate alternate text for article 3 irrespective of indigenous peoples' views was contrary to General Recommendation XXIII(51) of the Committee on the Elimination of Racial Discrimination, adopted on 18 August 1997, which provides that *"no decisions directly relating to the... rights and interests [of indigenous peoples] are taken without their informed consent"*.

Indigenous speakers variously described self-determination as a way to strengthen the capacity of indigenous peoples to chart their economic, social, cultural and political destinies, to lessen conflict between indigenous peoples and States, to promote peaceful co-existence, and to enable indigenous peoples to bring about sustainable development. An indigenous representative from the Philippines noted that in the end, recognition of self-determination would strengthen the UN as a global body dedicated to defending the rights of the weakest and most vulnerable.

Several indigenous speakers urged States, in continuing the dialogue on self-determination, to have regard to the jurisprudence of the UN's human rights treaty bodies. Not only is it accepted practice in the treaty bodies to use language of "indigenous peoples". It is also general practice in the Human Rights Committee and the Committee on Economic, Social and Cultural Rights, the bodies responsible for supervising implementation of the two Covenants, to inquire in relation to common article 1 as to indigenous peoples' right of self-determination. Particular reference was made to the concluding observations of the Human Rights Committee on Canada (UN Doc CCPR/C/79/Add 105/1999, para 7) and Norway (UN Doc CCPR/C/79/Add 112/1999, para 17). In this regard, the representative of the Saami Council noted that Finland, Norway and the Russian Federation, by referring to internal self-determination, sought to impose a qualification not imposed by the Human Rights Committee.

Several indigenous representatives commented that States' concerns in relation to territorial integrity are taken care of by article 45 of the Declaration, which provides *"Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations."* Other indigenous representatives suggested that States' concerns in relation to territorial integrity were also protected by the General Assembly's 1970 *Friendly Relations Declaration* (resolution 2625). The *Friendly Relations Declaration* clarified the relationship between the principle of self-determination and those of territorial integrity and national unity, establishing that the right of self-determination as articulated in the UN Charter did not normally entail a right of secession from independent States. The *Friendly Relations Declaration* suggested a criterion of "effectively representative" to determine when indigenous peoples are no longer bound to exercise their right of self-determination by seeking to reach agreement on sharing power within existing States. This approach promoted the negotiation of agreements. The representative of Na Koa Ikaika O Ka Lahui Hawaii noted that as expressed in *Friendly Relations Declaration* and the *Vienna Declaration*, the principle of territorial integrity imposes a requirement of legitimacy on States.

Several indigenous speakers commented that international law does not impose any one form of exercise of self-determination. Others commented that in the exercise of self-determination, few, if any, indigenous peoples seek to dismember existing States. Instead, most take a functional approach, expressing a preference for recognition and constitutional reform within States in order to develop indigenous political institutions and determine their development in accordance with their own values.

Those indigenous organisations such as the ICC and Saami Council which have expressed a willingness to engage in a dialogue about changes that strengthen or clarify the existing text stated clearly that there can be no qualification of self-determination, and that it would be unacceptable and discriminatory to restrict indigenous peoples' self-determination to internal self-determination. Although the vast majority of indigenous peoples would chose to implement their right of self-determination through autonomy and self-government arrangements, the right could not be limited a priori to such arrangements.

Numerous indigenous speakers vigorously opposed attempts by some States to introduce a distinction between internal and external self-determination. For example, the representative of ATSIC stated that:

> *"[T]he distinction suggested by some States between internal and external self-determination is* ***ahistorical*** *and* ***artificial****. It is* ***ahistorical*** *because it ignores the inherent nature of our right of self-determination. The equation of external self-determination with secession is* ***artificial*** *because it confines the right and cuts off choices. The right of self-determination requires States to recognise our human rights internally. It also requires recognition of our human rights at the international level. Our participation in UN fora is one external expression of self-determination which does not involve secession or independence. There may well be others."*

The representative of ATSIC also referred to the proposal by the Chairperson at the 5th session in 1999 that future debate on self-determination be based on three premises, including that *"the universally accepted International Covenants, which contain the right to self-determination"* be taken as a basis for future discussion. The representative commented that in reaffirming its inability to accept inclusion of the term self-determination in the Declaration, Australia had apparently chosen to ignore the Chairperson's request.

Significant interventions on self-determination were made by representatives of the indigenous peoples of Africa and, for the first time, the Solomon Islands. It was stated that in Africa, democratic States are in a nascent state of development and that the rights of indigenous peoples must be tailored in. Mr Ian Aujare described self-determination as a fundamental issue in the Solomon Islands, referring to current social unrest inherited from colonisation, and the many problems not addressed in the decolonisation process.

Much less debate was devoted by indigenous speakers to the Declaration's provisions concerning land and resources. Indigenous speakers again urged States to have regard to developments in the jurisprudence of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination. Numerous interventions referred to the CERD Committee's General Recommendation on the Rights of Indigenous Peoples, which calls on States to:

> *"recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands and territories and resources and, where they have been deprived of their lands and territories traditionally used or otherwise inhabited or used without their free and informed consent, to take steps to return these land and territories. Only where this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories."*

In relation to land and resource rights, several indigenous representatives urged States not to be limited by domestic constitutions, legislation or policy. It was said that such an approach would conflict fundamentally with the purpose of international human rights standard-setting. The representative of the African Indigenous and Minorities Peoples' Organisation noted that the Batwa people of the Great Lakes Area had been deprived of the enjoyment of the natural resources which constitute the basis of their survival. The Batwa people continued to be dispossessed through development initiatives including resettlement schemes, the creation of national parks and reallocation of land to private developers. An indigenous representative from the Philippines stated that throughout the world, indigenous peoples are losing control of their land and resources.

Self-determination, land rights, natural resources: Interventions of State delegations

In the general debate on self-determination, Norway referred to the critical stage of negotiations which have been reached in the CHRWG, and to the need to reach consensus on core principles in the Declaration. Norway remained convinced that the success of the CHRWG's efforts will depend on its ability again to consider self-determination. According to Norway, self-determination exercised within States included the right of indigenous peoples to participate at all levels of decision-making in legislative and administrative matters and in the maintenance and development of their political and economic systems. The Declaration contained various provisions concerned with the implementation of self-determination, including the right of indigenous peoples to maintain and develop their own economic and social systems, to control their own affairs, and to develop and make use of their own institutions if they so chose. It was crucial to find ways so that indigenous peoples can live within existing States through power sharing arrangements. In relation to land and resources, the Norwegian Government was currently preparing legislation concerning the use, management and ownership of land in Finnmark. A committee was being formed to consider Saami rights in other parts of Norway.

Finland expressed support for the term indigenous peoples because it makes meaningful the great number of collective number rights contained in the Declaration. Some features of collective rights were essential when seeking to preserve the identities of indigenous peoples. Finland supported self-determination in the Declaration provided that article 31 concerning self-government remained formulated in the manner proposed, that is, to refer to internal and local affairs. Self-determination contained two dimensions, internal and external. Finland considered the Declaration's land and resource provisions to require revision. They should be flexible in order to make possible a number of fair and just national solutions.

Canada commented that the issue raised by the Declaration was whether the right of self-determination applied to indigenous peoples living within existing States and, if so, what this right consisted of. As stated at previous sessions, Canada accepted a right to self-determination for indigenous peoples which respected the political, constitutional and territorial integrity of democratic States. Exercise of the right involved negotiations between States and the various indigenous peoples within those States to determine the political status of the peoples involved and the means of pursuing their economic, social and cultural development. Canada could accept many of the principles contained in Declaration's land and resource provisions. In particular, Canada recognised the right of indigenous peoples to own, control, develop and use their resources, as well as the right to determine and develop priorities, and the importance of adequate process. In order to ensure their universal application, however, the provisions had to be flexible enough to take account of many different national situations. For example, according to Canada the current text did not address the situation of indigenous peoples who had left their traditional lands and no longer lived in traditional communities.

Australia remained unable to accept the language of self-determination since this implies for many peoples the establishment of separate States. In relation to land and resource rights, Australia accepted that the relationship of indigenous peoples and their traditional lands is special and important, but was unable to accept the provisions of the Declaration in their present form. Venezuela stated that the new Constitution of Venezuela recognised the existence of indigenous peoples and communities, as well as their collective rights, and guaranteed direct representation of indigenous peoples through their representatives in the national assembly. In Venezuela, the original rights of collective ownership of ancestral lands were recognised. Denmark confirmed the support of Denmark and the Greenland Home Rule Government for the right of self-determination for indigenous peoples and for the inclusion of such right in the Declaration. During the last two to three decades, new forms of relationships between indigenous peoples and states had evolved. The establishment of the CHRWG and a Permanent Forum were examples of such evolution. Whilst Denmark could accept article 3 in its current wording, one way of accommodating the concerns of some States would be to retain the language of article 3 but expand upon article 45 as proposed by Finland.

Guatemala considered it unnecessary to redefine or restrict the right of self-determination. During the decolonisation period, the right to self-determination resulted in the birth of nations. Today, exercised within States, self determination enabled peoples and national groups to define their political status through processes of decentralisation and autonomy and to pursue their economic, social and cultural development. It was a contradiction to believe, on the one hand, in a pluralistic and participatory democratic system and, at the same time, to deny or restrict the right of self-determination. France confirmed its recognition of the right of indigenous peoples to self-determination, however not to the detriment of other populations in the territories concerned. The principle should be applied through negotiation and dialogue, and adapted to the circumstances of each case. France noted that the right of self-determination also contains a territorial aspect relating to land and resources.

The Russian Federation proposed the reformulation of the Declaration's provisions dealing with self-determination in order to reflect broad autonomy of indigenous peoples within State boundaries, without posing any detriment to the territorial integrity of the State. The Russian Constitution took into account the principles contained in the Declaration's land and resource provisions concerning the particular link of indigenous peoples with their land. New Zealand accepted a right of self-determination for indigenous peoples in the Declaration, if the meaning of the term was clearly elaborated in a manner consistent with New Zealand domestic understanding of the relationship between Maori and the Crown. Some of the present language of the Declaration (for example, references to autonomy, self-government and separate legal, taxation and judicial systems) were inconsistent with New Zealand policy, and more appropriate to the situation of indigenous people living on reservations than those integrated into the wider society as in New Zealand. The language of the Declaration would need to be clarified to ensure consistency with the Treaty of Waitangi settlement processes and policies, international understandings and domestic New Zealand law.

Ecuador expressed a commitment to work with indigenous representatives to find a fair and balanced solution in relation to the issue of self-determination. The Constitution of Ecuador recognised the diversity of cultures and languages, establishing Ecuador as a pluri-cultural and multi-ethnic state. Since the transition to democracy in 1979, political participation of indigenous peoples and Afro-Ecuadorian peoples had been guaranteed, and political participation processes further consolidated to guarantee collective rights to maintain, develop and strengthen indigenous traditions. In particular, Ecuador recognised the right of ownership of communal lands, the right to participate in the use, administration and conservation of renewable natural resources, an entitlement to be consulted in relation to the exploitation of non-renewable natural resources as well as to benefit from the proceeds of the exploitation of such resources, where possible to receive compensation for any harm caused, as well as collective intellectual property rights in ancestral knowledge. This positive approach led Ecuador to appeal to States with difficulties with the concept of self-determination to reach agreement in order to bring indigenous rights into line with existing international law and the UN Charter.

Spain supported the right of indigenous peoples to self determination, it being understood as an internal process of political, geographical and administrative decentralisation allowing indigenous peoples to participate at all levels of decision making, but not impacting upon the territorial integrity of democratic States. Spain supported an initiative of Denmark to hold seminars at which States and indigenous peoples might seek to achieve some common understanding in relation to self-determination. The representative of the World Bank referred to issues concerning land tenure and the control over natural resources as essential conditions for the eradication of poverty. Discussion of land and resource rights are normative aspects of development which should be respected and cultivated.

Cuba supported the inclusion of the right of self-determination in the Declaration, referring to the UN Charter and the General Assembly's *Friendly Relations Declaration.* The concerns of some States were not fully founded as the *Friendly Relations Declaration* adequately protected the political unity and territorial integrity of States. Japan stated that there were no international instruments within the UN system which refer to collective rights. According to Japan, the human person is the central subject of human rights, and such human rights can be exercised in community with others (article 3 of the UN Declaration on the Rights of Minorities). It was important not to take a discriminatory approach in the Declaration and to provide to indigenous peoples collective rights which no other groups enjoy.

Pakistan considered the concerns of some States in relation to territorial integrity to be ill founded. According to Pakistan, there was no contradiction between self-determination and territorial integrity, rather these were mutually reinforcing principles which strengthened democratic values at the national and international levels. Pakistan referred, as well, to the *Friendly Relations Declaration.* According to Pakistan, it was wrong to associate self-determination with the historical process of decolonisation: It was not colonisation which led to the emergence of self-determination, rather self-determination which required the process of decolonisation. The Mexican Constitution recognised particular forms of self-determination, including control, to the extent possible, by indigenous peoples of their own development. In addition, local constitutions in Mexico addressed self-determination in different ways. Bangladesh referred to global acceptance of self-determination as a right which includes the right to respect and preserve the identities of indigenous communities. However, the indigenous/non-indigenous dichotomy did not apply in Bangladesh where one was still grappling with questions of definition. As part of the Asian group, however, Bangladesh had decided to put aside the debate on the definition of indigenous peoples at the present time.

In his summary at the conclusion of the general debate, the Chairperson commented that most of the debate had involved repetition of previous positions without providing any new material. Nevertheless, he stressed some positive aspects including greater flexibility, willingness to listen and to take into account positions of other participants, as well as recognition that formal, rigid dialogue will not enable progress in the CHRWG. He expressed support for an approach which focussed both on the most difficult articles and intensified dialogue on crucial themes, whilst also considering the easiest articles in order to reach agreement and generate sufficient trust in order, at an appropriate time, to deal with the more sensitive issues in the Declaration.

Articles 1, 2, 12, 13, 14, 44 and 45:
The general approach of State delegations

In 1998 at the 4th session of CHRWG, then Chairperson Urrutia received an informal paper setting out concrete proposals of a number of State delegations, especially Australia, Canada and the USA, in relation to articles 15 to 18 of the Declaration. Indigenous representatives expressed grave concern that they had not participated in the elaboration of this non-consensual paper, and emphasised that the CHRWG had no mandate to engage in a drafting or negotiating exercise. In response, then Chairperson Urrutia confirmed that the paper was not a Chairperson's nor a Secretariat document, and that the CHRWG was not engaged in a drafting or negotiating exercise.

At the 5th and 6th sessions, Chairperson Chavez requested State delegations to continue their informal consultations with a view to bringing closer together various positions. Thus, the Chairperson actively encouraged the efforts of States to negotiate alternate language to the current text. At the 6th session, consultations focussed on articles 1, 2, 12, 13, 14, 44 and 45 and produced 7 documents for discussion in informal plenary sessions. In the first such plenary session, Chairperson Chavez referred participants to the summary of the general debate on these provisions at previous sessions, in particular at the 2nd and 5th sessions in 1996 and 1999 respectively (UN Doc E/CN 4/1997/102 and E/CN 4/2000/84).

Introducing the agenda item, Chairperson Chavez emphasised the need to demonstrate concrete progress to the CHR. Whilst he did not anticipate that consensus would be possible on any one proposal, he proposed to allow specific proposals and to hear comments upon them. In particular, he encouraged collective proposals. Paragraph 97 of the report of the 6th session provides that in all the

7 discussion documents, the term peoples appeared between brackets. The paragraph continues:

> *"Annex 1 of this report contains an explanatory note where the different positions of governmental delegations are reflected in connection with the use of the term 'peoples' in the proposals they have presented. It was noted that all indigenous delegations and some governmental delegations can accept use of the term indigenous peoples.*
>
> *98. Indigenous representatives opposed the inclusion of the proposals made by governments in Annex 1 of this report as well as the explanatory note on the term 'peoples' because they were presented for discussion purposes and the content of the discussion paper appears in the report. They also requested the inclusion of a statement on the use of the term 'peoples' in annex 2 of this report, which contains indigenous representatives proposals. The Chair decided that both the proposals and the note would be included in Annex 1."*

Articles 1, 2, 12, 13, 14, 44 and 45:
The approach of indigenous delegations

Many indigenous delegations maintained strong opposition to commenting upon anything other than the original text of the Declaration, as approved by the Sub-Commission. These delegations considered the States' discussion papers to reflect an unacceptable departure from the consensual working methods agreed upon at the earliest sessions of the CHRWG. The agreed working methods had been to focus upon the original text as a basis for all discussion. Any comments addressed to the States' discussion papers amounted to tacit endorsement of the inevitability of textual change, and legitimised the approach of those States most aggressively pursuing such change.

Other indigenous participants, including the Saami Council, ICC, Assembly of First Nations, Indian Law Resource Center, Navajo Nation, the Aboriginal and Torres Strait Islander Commission and other indigenous delegations from Australia, and many indigenous delegations from Asia, analysed the States' proposals to determine whether they succeeded in rebutting the very high presumption as to the integrity of the current text. They considered whether the proposed changes were reasonable, necessary, improved and strengthened the existing text, and conformed with the principle of equality and the prohibition of racial discrimination. These participants concluded that the majority of proposed changes lacked any justification, and frequently obscured the clarity of or weakened the existing text.

Paul Chartrand on behalf of the Metis National Council proposed a test of functional clarity, according to which *"a thing is good enough if it does what it is designed to do"*. In order to rebut the presumption of the validity of the current text, the test was whether the language was so ambiguous, its meaning so opaque that it failed to identify the subject matter the concern of the article. In accordance with this test, in asking whether the language of the Declaration was clear enough, States should consult with indigenous peoples because of: (i) their obligations as Members of the United Nations in relation to self-determination; and (ii) fundamental values of democracy which required the design and implementation of State policy in consultation with the intended beneficiaries.

Article 45

Article 45 of the Declaration, as drafted, provides:

> *"Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations."*

The States' discussion paper on article 45 proposed no alternate text, however commented that:

> *"Although no alternate language is being proposed, this article is not yet ready for adoption, because it qualifies the entire Declaration and will have to be reviewed at a later stage."*

Numerous indigenous delegations called on States to demonstrate tangible progress in consideration of the Declaration by the adoption, at first reading, of article 45. Several representatives commented that without the adoption of article 45, the suggestion that the absence of alternate language constituted progress was illusory. They referred to the CHRWG's commitment to securing concrete outcomes and emphasised the importance of solid confidence-building gestures on the part of States. Numerous indigenous representatives reminded participants that the CHRWG was currently engaged in a first reading of the Declaration. It was stated that the purpose of a first reading was to reach broad agreement on the language of provisions. At first reading, any matters requiring review at a later stage were noted. The purpose of a second reading was to address any matters identified at first reading for review at a later stage. The purpose of a second reading was to consider fine tuning said to be required as a result of the adoption, at first reading, of a draft text as a whole. Several indigenous representative reminded participants that article 45 of the Declaration is based upon article 30 of the Universal Declaration of Human Rights (UDHR).

States which spoke against adoption of article 45 included Australia and the USA. Argentina stated that the provision was not important, that it was "almost a standard, marginal text" which had precedents and could be adopted in its present form. Denmark commented that the provision dealt with a procedural issue, a technicality, and should be dealt with at a later stage. The representative of Denmark emphasised the interrelatedness of all provisions of the Declaration.

The Chairperson resisted calls to seek provisional adoption of article 45, stating that the consensus amongst States was to postpone its adoption, as stated in the discussion paper which had been tabled.

Article 44

Article 44 of the Declaration, as drafted, provides:

> *"Nothing in this Declaration may be construed as diminishing or extinguishing existing or future rights indigenous peoples may have or acquire."*

The alternate language proposed in the States' discussion paper places square brackets around the word peoples. Under the heading "Items for further Discussion", the discussion paper provides:

> *"The term 'existing or future' in the English version is redundant; it si not consistent with the Spanish and French texts, which are clearer. We suggest that the English version be reviewed to make it consistent with the Spanish and French versions. Improved language may be developed through consideration of other international instruments, however the current language serves the purpose."*

Ecuador and Sweden supported article 44 as drafted. Switzerland supported the article as it stands, and commented that it should also be possible to delete the square brackets around indigenous peoples and conduct the debate concerning the term indigenous peoples in connection with article 3. Guatemala stated that there should be no qualification, limitation or restriction on the word peoples. According to Guatemala, the concept of self-determination made no sense if used in connection with language of people, rather than peoples.

Spain could similarly support article 44 as it stands, noting that the reference to indigenous peoples presented no difficulties. France was able to accept the language as it stands, in particular the term peoples, even though France would prefer the expression "peoples or individuals". Numerous States, including Australia, Canada, Denmark, Finland, New Zealand, Norway and the Russian Federation, indicated that they could accept article 44 as drafted, but opined that the text might be improved, in particular by bringing into line the different language versions. The USA supported the Chairperson's approach to bracketing the term peoples.

In numerous interventions, indigenous representatives stated that in consideration of the Declaration, they could not accept, now or at any future time, any bracketing of the term indigenous peoples. Indigenous speakers urged those few States which oppose use of the term indigenous peoples to consider that their resistance had become the main stumbling block to progress in the CHRWG, and to reflect upon the destabilising effect that such intransigence was having on confidence-building. The representative of ATSIC appealed to those States which have no problems with the term indigenous peoples *"to assist us in ensuring that the UN applies its own standards universally and equally, that it acts without prejudice and without discrimination. We would appreciate your support in finding a way to continue our discussion of the Declaration without any bracketing of the 's' in indigenous peoples."* Several indigenous speakers called on those States which dissent from the general trend to note their reservations, in language along the lines of that contained in paragraph 4 of the reports of the CHRWG, but not to insist on square brackets and hence impede movement forward in discussion of the Declaration.

Article 1

Article 1 of the Declaration, as drafted, provides:

> *"Indigenous peoples have the right to the full and effective enjoyment of all human rights and fundamental freedoms recognized in the Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law."*

The alternate language proposed in the States' discussion paper (i) places square brackets around the word peoples; (ii) introduces a reference to indigenous individuals; (iii) introduces before the phrase "international human rights law" the adjective "applicable"; (iv) replaces the term "law" with "instruments"; and (v) introduces a new second paragraph which provides:

"[2. Indigenous individuals may exercise their rights, including those set forth in this Declaration, individually as well as in community with other members of their group, without any discrimination.]"

Guatemala and Mexico supported the original text of article 1. Denmark, Ecuador, Finland and Switzerland similarly had no difficulties with the original text. Norway accepted the text as drafted but was open to improving and strengthening the text, and accommodating reasonable concerns of other delegations.

Australia, Canada, Japan, Norway, Spain, Sweden and the USA supported the introduction of the adjective "applicable" to qualify "international human rights law". Denmark, Finland and Switzerland could accept a reference to "applicable", even if, according to Switzerland, such a reference added little. Guatemala did not consider such a reference to be appropriate, nor did Denmark see any need for such a reference. Ecuador similarly considered the current text to be quite clear.

Canada emphasised the importance of a reference to indigenous individuals in the first article of the Declaration. To similar effect Japan, New Zealand, the Russian Federation and Spain. Ecuador considered that such a reference might be quite useful, provided that the reference to collective rights was maintained. Finland could accept such a reference. As a compromise, Switzerland could also accept a reference to individuals.

Canada rejected the proposed restriction to "international human rights instruments", rather than "international human rights law", as such restriction excluded the body of customary international law. To similar effect Denmark, Guatemala, Norway, Spain and Switzerland. The USA advocated use of the term "instruments", which term, it said, included customary international law.

Japan and the USA supported the proposed second paragraph of article 1. Sweden also supported the paragraph, the wording of which is drawn from article 27 of the ICCPR and the 1992 UN Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities. Canada, Denmark, Finland, Guatemala, Norway, Spain and Switzerland opposed the proposed second paragraph, with Norway commenting that it added no value to the current text.

Indigenous representatives commented that the proposed introduction of a reference to indigenous individuals was unnecessary, referring to the protection conferred upon indigenous individuals by, amongst others, articles 2, 5, 6, 7, 8, 9, 18, 22, 32, 33, 43 and 45 of the Declaration. It was stated that indigenous individuals already enjoy, in theory though not in practice, the whole body of international human rights law concerning the rights of the individual. As at previous sessions of the CHRWG, indigenous speakers rejected the proposed introduction of a reference to "applicable" as unnecessary to improve the clarity of the text, or for any other reason. The representative of ATSIC posed the question: "*Surely, no State delegation is suggesting that the text, as drafted, can be construed to refer to inapplicable international human rights law?*"

Indigenous speakers consistently rejected the proposed limitation to international human rights instruments, rather than law as an unacceptable weakening of the text, the effect of which was to exclude the body of customary international law. In relation to the US intervention, one indigenous delegation was at a loss to understand how the term "instruments" could possibly be construed to include customary international law.

Like many States, indigenous representatives rejected the proposed second paragraph as contributing nothing by way of strengthening or clarifying the text. The representative of ATSIC, for example, stated that the rights of indigenous individuals and the concept of non-discrimination are already adequately dealt with elsewhere in the Declaration. The ATSIC representative continued: "*And with respect to the reference to the exercise of rights 'individually as well as in community with other members of the group', we vigorously oppose any attempt – unintended or surreptitious – to introduce into the Declaration language which is associated with international standards on the rights of minorities. It is well settled that indigenous peoples and ethnic minorities are conceptually distinct groups. This working group must not be used as a forum to reagitate questions which have been settled elsewhere.*"

Article 2

Article 2 of the Declaration, as drafted, provides:

> *"Indigenous individuals and peoples are free and equal to all other individuals and peoples in dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity."*

The alternate language proposed in the States' discussion paper (i) places square brackets around the words "and peoples"; (ii) places square brackets around the adjective "adverse"; and (iii) introduces a new second sentence which provides:

> *"This does not preclude special measures as contemplated in article 1.4 of the International Convention for the Elimination of All Forms of Racial Discrimination."*

Finland, Norway and Switzerland could accept article 2 as drafted.

The USA and UK supported language for article 2 closer to that contained in article 2 of the UDHR. Australia and Guatemala commented that the adjective "adverse" could be eliminated. Ecuador, Guatemala and Norway could also support the deletion of "adverse".

Australia and Guatemala supported the introduction of the second sentence. Canada considered an explicit reference to "special measures" preferable in order to avoid any doubt. Ecuador and Finland could support such a proposal. Norway considered that the proposal required further discussion.

Indigenous representatives stated that the States' proposals concerning article 2 neither strengthened nor clarified the text, and were therefore neither necessary nor acceptable. It was stated that the adjective "adverse" was usefully employed in article 2 to distinguish between adverse discrimination and positive discrimination or affirmative action. Similarly, indigenous representatives stated that the proposed second sentence, with its reference to special measures, was superfluous. It was noted, for example, that the General Comments of the Human Rights Committee and the CERD Committee confirmed that the guarantee of equality and non-discrimination comprehends special measures. That is, international jurisprudence already established that special measures were consistent with the guarantee of equality and non-discrimination.

Article 12

Article 12 of the Declaration, as drafted, provides:

> *"Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artifacts, designs, ceremonies, technologies and visual and performing arts and literature, as well as the right to the restitution of cultural, intellectual, religious and spiritual property taken without their free and informed consent or in violation of their laws, traditions and customs."*

The alternate language proposed in the States' discussion paper contains numerous square brackets and proposals in relation to article 12. Without setting out each proposal, the principal thrust of the alternate language is (i) to place square brackets around the word peoples; (ii) to introduce at the end of the first sentence a reference in square brackets to "in conformity with domestic laws";

(iii) to treat in separate paragraphs recognition of a right to practice and revitalise cultural traditions and the issue of return of cultural property; (iv) to place square brackets around "intellectual"; and (v) to introduce in connection with property taken without consent a temporal limitation to property taken "after the present Declaration comes into effect". The accompanying comments provide that whilst some States are concerned with the potential retroactive application of this part of article 12, "*[o]ther states accept that this paragraph could apply to property taken in the past*". The comments also provide several proposals for a new general paragraph on third party rights.

Finland considered the provisions of Part III of the Declaration, to which article 12 belongs, to be the least controversial in the Declaration. Accordingly, Finland could accept article 12 as drafted. Guatemala could also accept the language as drafted, but was prepared to discuss alternate language in order to make consensus possible. Brazil had no particular difficulties with the first part of article 12. However, Brazil had concerns in relation to the potential retroactive application of the 2nd part of the article to property taken in the past. For this reason, Brazil preferred language of "best possible efforts". Australia commented upon the need to have regard to the rights of others, and considered that the issue of intellectual property would be better dealt with in article 29. Australia had no difficulty with the retroactive application of article 12. Denmark could accept the first 2/3 of article 12 as drafted, but proposed the treatment of the words after "literature" dealing with restitution in a separate paragraph. Denmark also saw merit in the insertion of a separate article dealing with 3rd party rights, although expressed no preference for particular language at the present time.

New Zealand considered that the 2nd sentence needed to be tempered by an appropriate reference to the public interest, possibly through language of "as far as practicable". New Zealand preferred clarification of the part of article 12 dealing with restitution to ensure consistency with existing intellectual property conventions and NZ domestic law, and saw merit in moving this part of the article to the end of article 29. In relation to the first sentence of article 12, Japan supported the introduction of language "to the same extent as other nationals". In relation to the 2nd part of article 12, Japan considered that any restitution should be based upon appropriate national laws equally applied to all other persons, and should refer to property taken in "violation of relevant laws and regulations", rather than in "violation of their laws, traditions and customs".

Sweden supported the first sentence as drafted. In relation to the 2nd sentence, Sweden supported 2 paragraphs, the 2nd of which would commence "States shall make best efforts to promote the return to indigenous peoples of ...". Canada similarly supported the insertion of 2 paragraphs. In relation to the issue of third party rights, Canada supported the use of language consistent with article 18(3) of the ICCPR. Canada also commented that the issue of intellectual property was substantially dealt with in article 29, and therefore proposed the deletion of "intellectual" in the proposed new paragraph dealing with the return of property. The language proposed by Canada included the mandatory "shall" rather than "should", as proposed by some other State delegations.

France considered the present wording of article 12 to be too vague, especially in relation to restitution, and shared the concerns of some delegations in relation to 3rd party rights. France supported a separate article dealing with restitution. Switzerland supported the first half of article 12, and in relation to the 2nd half supported the deletion of the reference to intellectual property.

Indigenous representatives expressed alarm at the large number of brackets and qualifications proposed by States. Indigenous delegations also protested against the manner in which the discussion paper on article 12 had been presented. It was stated that the paper proposed a total of 25 changes to the text of article 12. It was presented in English only. And, on the spot, indigenous delegations were expected to analyse the 25 proposals, consult in relation to them, and prepare interventions in response. It was asked whether any State could seriously suggest that the process ensured equal and effective participation by indigenous delegations.

In their interventions on article 12, indigenous representatives again referred to the unacceptable bracketing of peoples. Numerous representatives commented on the unacceptable weakening of the current text wrought by the proposed reference to "in conformity with domestic laws". The effect of limiting article 12 or any other article to operate in conformity with existing domestic laws would be to render nugatory the rights contained in the Declaration and allow the Declaration to become an instrument to protect the status quo in States.

Similarly, indigenous delegations stated that the proposal to introduce the expression "as far as practicable" to qualify the rights referred to in article 12 represented an unacceptable weakening of the text. One delegation commented that in the implementation of all the rights in the Declaration, considerations of availability of resources and other practical issues would play a role. However, it was stated, these are issues which relate to all guarantees of human rights, and not just those in this Declaration. They were no reason to qualify any of the rights recognised in the Declaration. Moreover, it was said, issues of implementation were adequately addressed in article 37. For similar reasons, indigenous speakers also opposed the introduction of any language of "best" or "appropriate" efforts to qualify the minimum standards contained in the Declaration.

Consistently with previous interventions, indigenous speakers vigorously opposed the introduction of language of "should" in the second paragraph of the proposed alternate language. Several speakers referred to the statement of the delegation of Switzerland at previous sessions of the CHRWG that the Declaration must be drafted consistently with the UDHR. Indigenous speakers voiced particular opposition to the proposed redrafting of paragraph 2 to destroy the concept of a right to restitution of cultural, intellectual, religious and spiritual property. It was stated that the effect of the redrafting was to remove any obligation of States. The paragraph's non-retroactive application brought it into direct conflict with the international prohibition of racial discrimination. The States' proposals made the right conditional upon relevant laws and regulations, and thus dependent upon the whims of domestic law and policy makers. It was stated that the removal of the reference to intellectual property severely eroded the protection provided in the current text. Whilst article 29 dealt with the issue of intellectual property, it did not address the issue of restitution dealt with in article 12, as drafted.

Finally, with respect to the concerns of some States in relation to 3rd party rights, it was noted that the drafters of ILO Convention No 169 had not considered such a limitation to be necessary in that instrument. Accordingly, it should have no place in the UN Declaration.

Article 14

Article 14 of the Declaration, as drafted, provides:

> *"Indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures, and to designate and retain their own names for communities, places and persons.*
>
> *States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected and also to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provision of interpretation or by other appropriate means."*

The alternate language proposed in the States' discussion paper (i) places square brackets around the word peoples; and (ii) places square brackets around the second paragraph, with the commentary that the issues contained in the paragraph should be addressed in the context of other articles of the Declaration, in particular:

- *"States shall take effective measures, whenever any right of indigenous peoples may be threatened, to ensure this right is protected" should be considered in the context of articles 37 and 39; and*
- *"to ensure that they can understand and be understood in political, legal and administrative proceedings, where necessary through the provisions of interpretation or by other appropriate means" should be considered in the context of article 19.*

Ecuador had no difficulty accepting both paragraphs of article 14 as drafted, as these were simply the application of universally recognised human rights principles to indigenous peoples. Denmark, Finland, Norway, the Russian Federation, Spain, Sweden and Switzerland could accept article 14 as drafted, but agreed that it might be more appropriate to deal with the 2nd part of article 14 elsewhere in the Declaration. Denmark and the Philippines did not support the limiting language in the 2nd paragraph "whenever any right of indigenous peoples may be threatened". In a move applauded by numerous indigenous delegations, Mexico declined to associate itself with any square bracketing of the 2nd paragraph of article 14. In relation to the 2nd paragraph, Mexico proposed the removal of the qualification "where necessary" and the insertion of "and effective" after the adjective appropriate.

Ukraine supported the alternative version of article 14. Australia, Canada, France and New Zealand supported the first paragraph of article 14 as drafted (with France preferring to see a reference to individual rights), but considered the issues in the 2nd paragraph better dealt with elsewhere in the Declaration. If the 2nd part were dealt with elsewhere in the Declaration, Canada, Denmark and Sweden would wish to see a reference in article 14 to the obligation of States to take effective measures to ensure these rights are protected. Brazil sought clarification from indigenous peoples' organisations of the reference to "political" and "administrative" proceedings in the 2nd paragraph, and of the costs implications in particular circumstances. Argentina was similarly concerned at the costs implications of this aspect of the 2nd paragraph.

Indigenous representatives again expressed their concern at the lack of time to prepare for discussion of the States' discussion paper on article 14. Those few indigenous representatives who were in a position to participate in the discussion on article 14 urged the

CHRWG to adopt article 14 in its original text, as there were no proposals for alternate text.

Article 13

Article 13 of the Declaration, as drafted, provides:

> *"Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of ceremonial objects; and the right to the repatriation of human remains.*
>
> *States shall take effective measures, in conjunction with the indigenous peoples concerned, to ensure that indigenous sacred places, including burial sites, be preserved, respected and protected."*

The alternate language proposed in the States' discussion paper (i) places square brackets around the word peoples; (ii) inserts the expression "in accordance with human rights standards" after "ceremonies" in the 2nd line; (iii) recasts the remainder of paragraph 1 as an obligation of States to take reasonable measures; (iv) qualifies the reference to States'' obligation with the expression "[s]ubject to domestic laws"; (v) replaces every reference to "shall" in the current text with the expression "shall/should"; (vi) introduces the adjective "reasonable" before "access" in the first paragraph; (vii) places square brackets around "use and control of ceremonial objects" in the 1st paragraph and moves this language, with the qualification "where necessary" to the end of the 2nd paragraph; (viii) inserts in square brackets after "repatriation of human remains" a reference to "and associated funerary objects"; (ix) replaces the obligation in the 2nd paragraph to "take effective measures" with language of "make best efforts"; and (x) inserts in square brackets next to "in conjunction" in the first line of the 2nd paragraph the term "consultation".

The discussion paper on article 13 was again presented only in English. It was not made available until the final informal meeting of the Working Group, thus preventing its discussion at the 6th session. The Chairperson initially proposed including the paper in the report of the session so that it could be translated and made available in the official languages of the UN. Indigenous representatives voiced strong opposition to the inclusion of the proposal in Annex 1 of the report, as the annex only contains proposals already discussed in the working group. Its inclusion, it was said, would misrepresent the discussion in relation to it. The Chairperson acceded to the protest of indigenous participants, noting that there was no consensus in relation to the inclusion of the paper on article 13 in annex I.

Annex 1:
Amendments proposed by Governments for future discussion

As at CHRWG5 in 1999, again at CHRWG6 the annexes to the report were the subject of mucn controversy. Annex I, entitled "AMENDMENTS PROPOSED BY GOVERNMENTS FOR FUTURE DISCUSSION", contains the alternate texts for articles 1, 2, 12, 14, 44 and 45 proposed by States at the 6th session, as well as texts for articles 15, 16, 17 and 18 proposed at the 5th session. In addition, the Annex contains an Explanatory Note on the bracketed use of the term indigenous peoples in the Declaration.

In this way, States have set up their own text, rather than that of the Declaration, as the basis for future discussions. Annex 1 does not reproduce the comments found in the original discussion papers, which reflect that some States could accept the text as drafted, or opposed particular changes proposed. Nor does Annex 1 reflect the actual debate in informal plenary sessions during which a significant number of States indicated that they supported the text as drafted, and opposed changes proposed.

States have also formalised their own closed inter-governmental sessions as the de facto mechanism for redrafting the Declaration. In this way, the are seeking to piece together a Declaration, the text of which is presented to indigenous representatives in plenary sessions as a fait accompli. This is tolerably clear from the fact that the States' proposals reproduced in Annex 1 are settled before indigenous representatives have any opportunity to comment upon them in an informal plenary session. Again, Annex 1 fails to reveal the varying degrees of enthusiasm amongst States for this process.

During the course of the 6th session, indigenous representatives expressed particular concern in relation to what was said to be the provocative nature of the "Explanatory Note" on the term indigenous peoples. This "Explanatory Note" is worded in language more specific and restrictive than that contained in Annex 1 to the report of the 5th session (UN Doc E/CN 4/200/WG 15/CRP 4) and in paragraph 4 of the reports of the CHRWG. In particular, it introduces a new reference to article 1(3) of ILO Convention No 169, as well as new possible expressions "indigenous populations" and "individuals in community with others". The Explanatory Note provides:

> *"There is no consensus on the use of the term 'indigenous peoples' at the Working Group on the Draft Declaration (WGDD). Some States*

> *can accept the use of the term 'indigenous peoples'. Some States can accept the sue of the term "indigenous peoples" pending consideration of the issue in the context of discussions on the right of self-determination. Other States cannot accept the use of the term 'indigenous peoples', in part because of the implications this term may have in international law including with respect to self-determination and individual and collective rights. Some delegations have suggested other terms in the Declaration, such as 'indigenous individuals', 'persons belonging to an indigenous group', 'indigenous populations', 'individuals in community with others' or 'persons belonging to indigenous peoples'. In addition, the terms used in individual articles may vary, depending on the context. Some delegations have suggested that if the term 'indigenous peoples' is used, we should also refer to Article 1.3 of ILO 169. Hence, the bracketed use of the term 'indigenous peoples' in the draft Declaration is without prejudice to an eventual agreement on terminology."*

Annex 2:
Proposals by Indigenous Representatives

At the 5th session in 1999, in response to the use of square bracketing in the discussion papers of States, the Indigenous Caucus proposed an "Annex on the term indigenous peoples" for inclusion in the final report. That annex was not included in the final report. At the 6th session, however, the Chairperson agreed to include in Annex II, entitled "PROPOSALS BY INDIGENOUS REPRESENTATIVES", an "Explanatory note on the use of the term indigenous peoples" prepared by the Indigenous Caucus. That Explanatory Note sets out the position of indigenous peoples' representatives in relation to the term indigenous peoples, providing *inter alia*:

> *"There can be no doubt that we are peoples with distinct historical, political and cultural identities. We are united by our histories as distinct societies, by our languages, laws, traditions. In addition, the profound social, cultural, economic and spiritual relationships of indigenous peoples with our lands, territories and resources are unique. Indigenous peoples are unquestionably peoples in every legal, political, social, cultural and ethnological meaning of the term. It would be discriminatory, illogical and unscientific to identify us in the United Nations Declaration on the Rights of Indigenous peoples as anything less than peoples. ...*
>
> *We continue to insist that the United Nations apply its own standards universally and equally, that it accord us the same rights as other peoples in the world, that it act without prejudice and without*

> *discrimination. We cannot agree, now or at any future time in consideration of the Declaration, to any qualification, explanation, definition, bracketing, parenthesizing or footnoting of the term indigenous peoples or peoples.*
>
> *The term indigenous peoples is well-established in international and national legal practice and ahs been consistently employed by the United Nations own expert human rights treaty bodies. Finally, since the establishment of the CHR working group on the Declaration in 1995, numerous States have accepted the usage of the term indigenous peoples."*

Outcomes

The 6th session of the CHRWG did not see the adoption of a single article of the Declaration. Instead, it saw the inclusion in Annex 1 to its report of alternate language proposed by States for articles 1, 2, 12, 14, 44 and 45. With the proposals in relation to articles 15, 16, 17 and 18 annexed to the report of the 5th session, this brings to ten the articles of the Declaration in relation to which States have proposed alternate text. After 6 sessions of the CHRWG, only two articles of the Declaration have been adopted, and these in 1998: article 5 which provides "*Every indigenous individual has the right to a nationality*"; and article 43 which provides "*All the rights and freedoms recognized herein are equally guaranteed to male and female indigenous individuals*".

In their approaches to the Declaration, State delegations can be divided into the following three blocs:

1. Those which support the adoption of some or all of the articles under discussion as drafted: The Nordics (Denmark, Finland, Norway, Sweden); Latin Americans (Brazil, Cuba, Ecuador, Guatemala, Mexico), Spain and Switzerland; Pakistan.

2. Those which support the principles contained in particular articles but insist on amendments to the current text. More flexible: France, New Zealand, Peru, the Philippines, Russian Federation, Ukraine, Venezuela. Less flexible: Argentina, Bangladesh, Canada, China.

3. Those which challenge fundamental principles underlying the Declaration, in particular, the concept of self-determination, language of indigenous peoples and/or the recognition of collective rights: Australia, Japan, the United Kingdom and the USA.

In assessing the relative influence of each of these positions, it is noteworthy that two members of the Security Council, the UK and the USA, belong to the bloc which raises fundamental, conceptual objections. Three other members of the Security Council, China, France and the Russian Federation, are closer to the compromise bloc. Generally speaking, the 6th session saw reasonably strong support for the Declaration from Asian Governments (with the exception of Japan), the Latin Americans (especially Ecuador and Guatemala), the Nordics (especially Denmark), Spain and Switzerland; a silence on the part of African governments; continuing obstructionist interventions by the UK; continuing positive shifts by Brazil and France; the entrenchment of a division in the CANZUS bloc (Canada, Australia, New Zealand and the USA), with Canada and New Zealand acting as independent brokers, and Australia and the USA consolidating their position as hard-liners.

The activity of States during the 6th session can be evaluated as follows:

1. Most active: Argentina, Australia, Bolivia, Brazil, Canada, Denmark, Ecuador, Finland, France, Guatemala, Japan, Mexico, New Zealand, Norway, Russian Federation, Spain, Sweden, Switzerland, Venezuela, UK and the USA.

2. Largely silent: Bangladesh, Chile, China, Cuba, Mauritius, Pakistan, Peru, Philippines, Ukraine.

3. Silent: Belarus, Colombia, Costa Rica, Egypt, Estonia, Germany, Holy See, India, Indonesia, Latvia, Malaysia, Nepal, Panama, South Africa, Togo, Uruguay.

4. Previously attended CHRWG but did not attend the 6th session: Algeria, Angola, Austria, Belgium, Bolivia, El Salvador, Ethiopia, Fiji, Honduras, Iran, Iraq, Italy, Jordan, Kenya, Libya, Morocco, Netherlands, Nicaragua, Nigeria, Paraguay, Poland, Portugal, Saudi Arabia, South Korea, Sudan, Thailand, Vietnam.

It is noteworthy that the number of active State participants has decreased since the first session of the CHRWG in 1995, with an increasing number of States registering as participants and remaining absent, silent or largely silent throughout the 6th session. It is also tolerably clear that after six sessions, the consensual working methods agreed upon in relation to all aspects of the CHRWG's work have broken down. Despite much rhetoric about inclusive, transparent processes, it is evident that States have opened up the text adopted by the WGIP and Sub-Commission for redrafting. The general debate on process which took place during the first week failed to secure any change to the formalisation of closed inter-governmental sessions as the de facto mechanism for redrafting the Declaration. Despite differing degrees of keenness amongst States about the inter-governmental redrafting exercise, no State has been willing openly to challenge the approach nor to propose alternative working methods.

Notwithstanding frequent affirmations by States of the importance of maintaining a general dialogue on the fundamental issues and concepts underlying the Declaration, the value of such dialogue is not immediately apparent. Despite such formal dialogue, many questions which indigenous representatives have raised remain unanswered. Similarly, numerous attempts by indigenous representatives to address issues raised by States have met with no response. Virtually every change proposed in the States' discussion papers on articles 1, 2, 12, 14, 44 and 45 has been proposed at a previous session. Similarly, almost every point made in an indigenous intervention in defence of those articles has been made at a previous session. As at previous sessions, numerous State delegations had expressed an ability to live with the text of these articles as drafted. As a result of their participation in the informal inter-governmental drafting sessions, however, supportive States found themselves shifting to accommodate the most inflexible of State positions in an effort to build consensus.

Nor is it clear that informal attempts to progress dialogue have yielded better results. For example, in the middle of the second week of the 6th session, an informal informal meeting was held, attended by indigenous and State representatives and co-chaired by a representative of the Indigenous Caucus and a representative of States. The meeting provided a less formal setting in which to exchange views on issues such as self-determination, the term indigenous peoples, collective rights, the use of the expression shall/should, references to domestic law. The exchange of views saw the recitation by delegations of well-rehearsed and known positions. There was no principled explanation, for example, by Australia of why it no longer supports self-determination, despite having been the first State in the WGIP to support its unqualified inclusion in the Declaration. Nor was there any credible justification by the UK and USA for their insistence on language of "should" rather than "shall", as found in the UDHR. Nor did the USA make any attempt to account for the apparent inconsistency between the recognition of collective rights and self-determination in USA domestic law, and the USA's steadfast refusal to countenance their recognition internationally.

If States are genuine in their desire to ensure meaningful participation of indigenous representatives, they must address as a matter of priority the inequalities in resources available to indigenous representatives and States in terms of preparation for and participation in the CHRWG. In relation to the States discussion papers, there was insufficient time adequately to analyse the proposals, to caucus and to respond to proposed textual changes. A particular difficulty arose as the Anglophone instigators of the process had failed to make adequate provision for translation. This placed many indigenous representatives at a considerable disadvantage in their ability to analyse and respond to proposed changes. Such an off-handed approach can only exacerbate the increasing sense of alienation and frustration amongst indigenous delegations.

Within the Indigenous Caucus, formal unanimity again prevailed. However, there was at times more activity within the regions and across the regions than within caucus. As reported previously, there has from the outset been tension within the Caucus as to whether the Declaration, as drafted, ought be defended to the end, or whether changes which improve or strengthen the text might be countenanced. Proponents of the latter view accept the reality of States' insistence on involvement in shaping the final version. It may well be that such differences of approach are fruitful, and lead to the deployment of a range of different, not inconsistent strategies for engagement in defence of the Declaration.

On a more encouraging note, there continues to be movement in the positions of States in the debate on self-determination and indigenous peoples. As reported last year, France now accepts language of indigenous peoples and a concept of self-determination, however qualified. At the 6th session, the Federation of Amerindian people of Guyana congratulated France on taking a step forward and making a major effort towards recognition of rights of indigenous peoples. Similar positive shifts were evident in the interventions of Brazil. It is unmistakable that the Nordic States, the Latin Americans, Spain and Switzerland remain generally sympathetically disposed towards the Declaration. Such sympathy has ensured that after 6 sessions of the CHRWG, the basic principles in each provision have been respected and the basic structure of the Declaration remains intact. It is also apparent that these States, at least, are listening to the interventions of indigenous delegations. The result has been a tempering of the impact of the redrafting zeal of some States and a thwarting, as yet, of efforts to wreak irremediable harm upon the Declaration.

THE UNITED NATIONS PERMANENT FORUM ON INDIGENOUS ISSUES

The Economic and Social Council (ECOSOC) of the United Nations made a historic decision on 28 July 2000, when the Council adopted a resolution to establish a "Permanent Forum on Indigenous Issues".

This decision is a significant milestone in the decades-long struggle of indigenous peoples to gain standing within the global community. The new UN body will formally integrate indigenous peoples and their representatives into the structure of the United Nations. It marks the first time that representatives of states and non-state actors have been accorded parity in a permanent representative body within the United Nations.

The Permanent Forum contains unique opportunities for enhancing the human rights, as well as the economic, cultural and social rights, of indigenous peoples. However, to what extent its establishment will cut an edge and make a difference to the world's indigenous peoples still remains to be seen. It is IWGIA's firm opinion that a Permanent Forum *might* have the potential of becoming a catalyst for the improvement of the rights of indigenous peoples worldwide. Under the umbrella of the United Nations system the Permanent Forum is the most promising institutional mechanism to which indigenous peoples will have access in order to enhance their social, economic and human rights; its establishment will hopefully consolidate and make more fiscally efficient the work of the UN regarding indigenous peoples.

In the year 2000, by establishing the Permanent Forum on Indigenous Issues the United Nations has come closer to fulfilling one of the goals of the International Decade of the World's Indigenous People. Another important but still outstanding goal is the adoption of a universal declaration on the rights of indigenous peoples.

Historical Facts about the Process Leading to the Establishment of the Permanent Forum on Indigenous Issues

The discussion concerning the establishment of a Permanent Forum for Indigenous Peoples within the United Nations system has been going on for nearly a decade.

The idea of establishing a permanent forum dealing with indigenous issues was derived from the realisation amongst the indigenous representatives, members of the Sub-Commission's Working

Group on Indigenous Populations and many member states of the UN that there was no permanent mechanism within the United Nations system to address the problems of the indigenous peoples of the world.

Though mention of the idea for a permanent forum can be found in several UN documents, it was not until the World Conference on Human Rights in Vienna in 1993 that the concept was seriously considered on the United Nations Agenda. The Vienna Declaration and Program of Action recommended the establishment of a Permanent Forum. The same year, when the General Assembly adopted the program of activities for the International Decade of the World's Indigenous People (1995-2004), it identified the establishment of the Forum as one of the main objectives of the Decade.

Since then the issue of establishing a Permanent Forum for indigenous peoples within the UN system has been the subject of many deliberations and resolutions by the Working Group on Indigenous Populations, the Sub-commission on Discrimination and Protection of Minorities, the Commission on Human Rights, ECOSOC and the General Assembly. Two workshops of experts on the subject have been organised, in Copenhagen, Denmark (June 1995) and in Santiago de Chile (June to July 1997), respectively. In between the two workshops a "Review of the existing mechanisms, procedures and programs within the United Nations concerning Indigenous Peoples" was published. This Review made by the Secretary General clearly illustrated the need for an integrative and coordinating mechanism within the United Nations for indigenous peoples.

Moreover, since the first workshop took place, indigenous organisations have expressed the need to initiate indigenous activities focusing on information, discussion and strategy development with regard to the establishment of the Forum, between indigenous organisations themselves at regional level. Five indigenous international conferences have been held in Temuco (Chile), Kuna Yala (Panama), Indore (India), Arusha (Tanzania) and Chiang Mai (Thailand). The indigenous declarations resulting from those conferences and the Arctic Indigenous Peoples Declaration on the establishment of the Permanent Forum have been included both as official UN documentation and as annexes in some of the UN meetings reports.

The indigenous declarations resulting from those conferences have been included both as official UN documentation and as annexes in some of the UN meetings reports.

Based on the recommendations from the workshops the Commission on Human Rights in 1998 adopted a resolution that opened the way for a new stage in the process towards the establishment of the Permanent Forum. This resolution decided to establish an *Ad Hoc*

Working Group to elaborate and consider further proposals for the possible establishment of the Permanent Forum. With regard to indigenous participation, the resolution stated that they would benefit from the same procedures as those established for the Working Group on the Draft Declaration.

The Working Group met for the first time in 1999, and the most significant advance made in this session was that the idea of establishing a Permanent Forum was consolidated and progress was achieved in discussions on fundamental issues such as mandate, level and composition.

Based on the results of this session, the Commission on Human Rights in 1999 decided to renew the Working Group's mandate in order for it to finalise its work. The second and last meeting of the Ad Hoc Working Group was held in February 2000, when governments achieved a long awaited consensus on the establishment the Permanent Forum for Indigenous Peoples. Based on the agreements reached in the 2nd Ad Hoc Working Group, the Danish Government sponsored a resolution for the establishment of the Permanent Forum on Indigenous Issues for the 56th session of the UN Commission on Human Rights. On the 27th of April 2000, the resolution to establish a Permanent Forum on Indigenous Issues was adopted in its entirety by a roll call vote of 43 in favour to none against it, with nine abstentions.

In July 2000, the United Nations Economic and Social Council considered the UN Commission on Human rights resolution and adopted by consensus the establishment a Permanent Forum for Indigenous Issues – an unprecedented event in the international community. The General Assembly endorsed ECOSOC's decision in its Millennium Session in December 2000.

Short Description of the Permanent Forum

The Permanent Forum on Indigenous Issues will be a **subsidiary organ of the Economic and Social Council**. It will consist of **16 members**, eight members are to be nominated by governments and elected by the Council, and eight are to be appointed by the President of the Council following formal consultations with the bureau on the basis of broad consultations with indigenous organisations and groups. The selection process is to take into account principles of representation and the diversity and geographical distribution of indigenous peoples.

All members of the Forum are to serve in their personal capacity as independent experts on indigenous issues for a period of three years with the possibility of re-election or reappointment for one further period.

The Forum shall hold an annual session of ten working days at the United Nations Office at Geneva or at the United Nations Headquarters in New York or at such other place as the Permanent Forum may decide in accordance with existing financial rules and regulations of the United Nations.

The meetings will be open in the same sense as the Working Group on Indigenous Populations (WGIP). Governments, intergovernmental organisations, NGOs as well as organisations of indigenous peoples may participate in the Forum as observers. Although the WGIP has only five government-appointed members, hundreds of indigenous persons and others have over the years participated in its meetings.

The Permanent Forum shall submit an annual report to the ECOSOC Council on its activities, including any recommendations for approval; the report shall be distributed to the relevant United Nations organs, funds, programmes and agencies.

The financing of the Permanent Forum shall be provided from within existing resources through the regular budget of the United Nations and its specialised agencies and through such voluntary contributions as may be donated.

Five years after its establishment, an evaluation of the functioning of the Permanent Forum, including the method for selection of its members, shall be carried out by ECOSOC.

Finally, the continuing role, even the existence, of the UN Working Group on Indigenous Populations after the establishment of the Forum is being questioned. The ECOSOC resolution states on this point that once the Permanent Forum has been established and has held its first annual session, the Council will review all existing mechanisms, procedures and programmes within the United Nations concerning indigenous issues, including the Working Group on Indigenous Populations, with a view to rationalizing activities, avoiding duplication and overlap and promoting effectiveness.

The Regional Division

The issue regarding the manner in which the eight indigenous members shall be geographically distributed has been an issue that indigenous peoples have been successful in achieving consensus on in 2000.

In an indigenous caucus held in Geneva on Sunday, 26 November 2000 during the 6th Session of the Open Ended Inter-Sessional Working Group on the Draft United Nations Declaration on the Rights of

Indigenous Peoples, participants thoroughly discussed the issue of the geographic distribution of the indigenous members of the Forum and agreed that eight indigenous representatives be selected from the following regions:

1. Arctic/Europe
2. Africa
3. Asia
4. North America
5. Central/South America and the Caribbean
6. Pacific
7. Former USSR and Eastern Europe
8. Rotating an additional seat between three regions – Asia, Africa and Central/South America and the Caribbean.

The Caucus also agreed that Central/South America and the Caribbean would be the first region to hold the 8th seat.

This regional division has since then been endorsed by several indigenous meetings where the issue of the Permanent Forum was discussed.

Remaining Challenges

Yet, many challenges remain before the Permanent Forum is finally established and can start its work in 2002 as planned.

One is the nomination of the eight indigenous members of the Forum. Indigenous peoples, unlike the member states of the United Nations, do not have approved organisational structures at regional level to enable them to nominate their representatives. While the resolution refers to broad consultations of the ECOSOC President with the indigenous organisations, there are no criteria to define what constitutes broad consultation.

The first nomination process of indigenous peoples is important in many ways, and indigenous peoples have emphasised that regional consultations being organised by indigenous peoples for the nomination of indigenous members is the best process "to ensure broad consultation with indigenous organisations" as enshrined in the resolution on the Permanent Forum on Indigenous Issues.

Unless indigenous peoples are able to nominate their representatives after the widest consultations possible, many governments may propose or nominate the indigenous peoples' representative instead. This would obviously be done without the participation and consent of the indigenous peoples, and it would be contrary to the spirit for establishing the Permanent Forum.

Moreover, indigenous peoples have also expressed their concern about the circular sent by the High Commissioner for Human Rights on the 26th of February 2001 inviting indigenous peoples' organisations to submit their nominations. Indigenous peoples believe that although calling for nominations from different indigenous peoples' organisations facilitates participation by all indigenous peoples, it excludes indigenous organisations' own regional consultation processes for the nomination of indigenous members. If the UNHCHR or the Secretariat of the Permanent Forum receives a large number of nominations from individual indigenous peoples organisations, indigenous peoples will effectively be denied the opportunity to nominate members through a their own consultation processes. In such a scenario, the Secretariat would effectively be screening the indigenous members, contrary to the resolution on the Permanent Forum.

From IWGIA's point of view the Forum will only be able to play an important role if it is closely linked to indigenous peoples' organisations and communities; if this sort of connection does not exist, the Forum will risk merely becoming an entity that is detached from reality.

Another remaining problem is the location of the Forum Secretariat. Indigenous peoples representatives have consistently demanded that the Permanent Forum should have its own secretariat staffed by indigenous persons. Since the Forum is established directly under ECOSOC and concerns itself with many other issues than human rights, indigenous peoples have strongly emphasised that it should be independent and not located under the High Commissioner for Human Rights (HCHR). Indigenous peoples have repeatedly expressed that the lack of a separate secretariat for the Permanent Forum will seriously hamper fulfilling the mandate of the Permanent Forum. They have also stressed the relevance of giving "preference to equally qualified indigenous candidates" for the staffing of the Secretariat of the Permanent Forum. At present it is still unclear whether the Secretariat of the Permanent Forum will be placed in the United Nations Headquarters in New York or in UN quarters in Geneva.

To what extent some governments and the UN bureaucracy will use the opportunity, maybe under cover of saving money, to have the Secretariat of the Permanent Forum located under the HCHR, and thus indirectly try to restrict its competence, still remains to be seen.

Final remarks

Now six years into the "International Decade of the World Indigenous People" the establishment of the Permanent Forum on Indigenous Issues is the most significant and concrete step so far taken by the United Nations system to address the unique issues faced by indigenous peoples. IWGIA sees this as the first indication of a political intent to put into practice the goals of the Decade, which the UN outlined as the strengthening of international cooperation for the solution of the problems faced by the indigenous peoples of the world.

However, IWGIA is fully aware of some of the pitfalls of the Permanent Forum in its current form. The Permanent Forum on Indigenous Issues as established does not meet the entirety of aspirations of indigenous peoples, but in our view, although the Permanent Forum is not an ideal construction, it is a compromise that after all is the first body within the UN system where indigenous peoples are being represented. It can never be perfect or ideal, and all interested parties must make every attempt to make it as ideal as possible. Furthermore, it is not to be forgotten that the effectiveness of the Permanent Forum in the end not only depends on the individual members of the Forum but also on the competence, credibility and legitimacy of those who want to make an impact on its work. Finally, the workings and doings of the Permanent Forum constitute a process continuously to be improved.

TOWARDS INTEGRATION OF NON-INDEPENDENT COUNTRIES IN THE UNITED NATIONS SYSTEM

The integration of non-independent countries (NICs) in programmes and activities of the United Nations system is an important element in the promotion of the self-determination process for those NICs which are *non*-self-governing, and for the overall development process of the *self-governing* NICs as well. As defined by the United Nations, legitimate models of governance are achieved through independence, free association, or integration with full political rights.[1] Independent states have full access to the U.N. system, while the non-independent countries, including the non-self-governing and self-governing territories, have partial and often inconsistent access.

Table 1. Non-Independent Countries as defined by United Nations Principles

Non-Self-Governing	**Self-Governing Territories**	**Former Territories that were integrated** (for comparison purposes only)
Caribbean: Anguilla Bermuda Netherlands British Virgin Islands Cayman Islands Montserrat Turks & Caicos Islands U.S. Virgin Islands	Aruba Antilles Puerto Rico	Guadeloupe & dependencies Martinique French Guiana
Pacific: American Samoa Guam New Caledonia Tokelau	Northern Mariana Islands Cook Islands Micronesia (Fed. States) Marshall Islands Belau (Palau) French Polynesia Wallis and Futuna	Hawaii

BEST COPY AVAILABLE

The self-governing nature of Puerto Rico and the Northern Mariana Islands vis a vis their respective 'commonwealth' arrangements with the United States has sparked increased interest from scholars due to the continual unilateral authority of the U.S. Congress to legislate for those 'self-governing' territories. The limitations of sovereignty exercised in the Federated States of Micronesia, Marshall Islands and Belau, pursuant to their free association agreement with the U.S., are also being reviewed in the academic community. The unilateral removal of French Polynesia and Wallis and Futuna from U.N. non-self-governing status without U.N. review is a further area of debate. Further, some territories like Easter Island, administered by Chile, are not even considered as appropriate for discussion in the self-government debate.[2]

Legislative Authority

Regarding the participation of non-independent countries in the United Nations system, it is important to recognise that the U.N. General Assembly has had the issue on its agenda (especially as related to the non-self-governing territories) since 1950.[3] Of special note was Resolution 566 of 1952 which recognised that the direct association of non-independent countries in the U.N. was an effective means of promoting the progress of the people of those territories. Throughout the decades of the 1960s through the 1980s, the General Assembly continued to address the question.

In the 1990s, the General Assembly, and the Economic and Social Council (ECOSOC), approved a series of resolutions in favour of a closer association between the non-self-governing territories and the U.N. system. In this connection, both the Assembly and ECOSOC repeated throughout the period the need for the formulation of assistance programmes to the non-self-governing territories - similar language used in previous decades in relation to liberation groups. The U.N. continued to expand its perspective during this period by requesting the various U.N. bodies to work toward the acceleration of progress in the economic and social sectors of the territories. It also requested the U.N. bodies to facilitate the participation of the representatives of the elected governments in relevant meetings and conferences of U.N. agencies and organisations "so that they might draw maximum benefits from the related activities of the specialised agencies and other organisations of the U.N. system."

Toward Integration in the U.N. System

A number of U.N. organisations have sought to implement this mandate. In the case of the specialised agencies, accommodations were made for the non-independent countries in general to achieve associate membership or observer status, depending on the terms of reference and rules of procedure of the specific U.N. body concerned. In the 2000 *Statement of the Government of the U.S. Virgin Islands to the U.N. Fourth Committee*, the representative revealed that "only seven of 14 specialised agencies have the necessary provisions within their rules of procedure for direct participation (of the non-independent countries)." [4] The specific bodies listed were the Food and Agriculture Organisation (FAO); the International Maritime Organisation (IMO); the International Civil Aviation Organisation (ICAO); the U.N. Educational, Scientific, and Cultural Organisation (UNESCO); the Universal Postal Union (UPU); the Pan American Health Organisation (PAHO) and the World Meteorological Organisation (WMO). Unfortunately, the number of territories directly participating in the programmes of these and other U.N. bodies remains insufficient, and it is only through the active implementation of the longstanding mandate on assistance to the non-independent countries contained in the resolutions on the issue for almost half a century that this participation deficit can be remedied.

U.N. Regional Commissions

Perhaps the most successful implementation of the mandate on participation by non-independent countries has been undertaken by the U.N. regional commissions - albeit with deliberate caution and passivity. The Economic Commission for Latin America and the Caribbean (ECLAC) and the Economic and Social Commission for Asia and the Pacific (ESCAP) have been especially active in extending associate membership to the countries and territories "within the geographic scope" of the work of the commission. In this case, with the notable exception of Tokelau, nine of the ten Non-Independent Pacific Countries (NIPCs) maintain associate membership in ESCAP, while seven of the ten Non-Independent Caribbean Countries (NICCs) enjoy the same status in ECLAC.

Table 2. Current Associate Members of the Economic Commission for Latin America and the Caribbean

Country	Date of Admission	Resolution of Admission
Montserrat [a]	23 April 1968	283 (AC.61) [b]
Netherlands Antilles	14 May 1981	445 (XIX)
British Virgin Islands	6 April 1984	453(XX)
U.S. Virgin Islands	6 April 1984	454(XX)
Aruba	22 April 1988	490(XXII)
Puerto Rico	10 May 1990	505(XXIII)
Anguilla	20 April 1996	561(XXVI)

[a] The West Indies Associated States, including Montserrat, were admitted as a single associate member.

[b] Committee of the Whole Resolution.

Source: *Working Group of Non-Independent Caribbean Countries, Caribbean Development and Cooperation Committee.*

The involvement of associate members in ECLAC, for example, had been bolstered by the existence of the sub regional Caribbean Development and Cooperation Committee (CDCC) as a separate intergovernmental body of small island Caribbean countries, serviced by the ECLAC Secretariat. Within the CDCC was formed the Working Group of NICCs in 1990 which led the effort within the wider U.N. system for increased inclusion and participation for Caribbean and Pacific non-independent countries. The decline and virtual demise of the CDCC by the beginning of the last quarter of the 1990s as a functioning ministerial body with the concomitant political support from regional governments, and the CDCC Secretariat's efforts to re-direct the Group's work programme away from anything considered the least bit controversial, made the efforts of the Working Group more difficult to sustain.

U.N. World Conferences and General Assembly Special Sessions

Despite the lack of support from the remnants of the CDCC, the momentum of the Working Group continued, in conjunction with other intergovernmental bodies such as the Offshore Governors' Forum, comprised of the Caribbean and Pacific territories of the U.S., namely American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands. For strategic and practical reasons, a shift in focus was made to concentrate on the participation of the associate member countries - the non-independent countries that were already associate members of ECLAC and ESCAP - in the world conferences of the United Nations. Under the leadership of the founding chairman of the Working Group, the Government of the U.S. Virgin Islands, efforts had been initiated at the beginning of the 1990s for associate member participation in the upcoming U.N. world conferences in the economic and social sphere. The first move to expand the participation in U.N. world conferences to associate members of the regional economic commissions was made in relation to the 1992 U.N. Conference on Environment and Development (UNCED). Supported by the newly formed Alliance of Small Island States (AOSIS) at the U.N., a resolution was adopted at the preparatory committee to grant observer status to UNCED to the associate members of the regional economic commissions.

This objective was not easily attained because of curious objections raised by the representative of one developed country that administered territories - other 'administering powers' were not politically threatened by the inclusion of the non-independent countries in a conference on environment. The isolated objection was ultimately withdrawn - after several days of informal debate - resulting in the new rule for associate member participation at the Earth Summit held in Brazil in 1992, which set forth that:

> *"Representatives designated by associate members of regional commissions may participate as observers, without the right to vote, in the deliberations of the conference, the Main Committee and, as appropriate, any other committee or working group."*

Ironically, the chairman of the Working Group who facilitated this historic observer status category could not attend the Rio Conference due to the unavailability of resources from within or outside the U.N. system. ESCAP associate members benefited from this effort. The UNCED decision paved the way for similar approvals for the participation of the associate members of ECLAC and ESCAP in subsequent U.N. world conferences between 1992 and 1996. These included the U.N. Conference on Straddling and Highly Migratory Fish Stocks (1993-95, New York), the Global Conference on the Sustainable Development of Small Island Developing States (1994, Barbados), the International Conference on Population and Development (1994, Cairo), the International Conference on Natural Disaster Reduction (1994, Yokohama), the World Summit for Social Development (1995, Copenhagen), the Fourth World Conference on Women (1995, Beijing), and the U.N. Conference on Human Settlements (1996, Istanbul).

Recent Developments

Recent activities on behalf of the associate member non-independent countries have focused o the participation in the special sessions of the U.N. General Assembly - another step in the direction of integration in the U.N. system. On the premise that these countries had participated in the world conferences in the 1990's, it only stood to reason that they should be eligible for participation in the special sessions of the General Assembly which were organised to "review and assess the implementation of the programme of action" of these world conferences.

Accordingly, decisions were taken, following the advocacy of the Chairman of the Working Group of Non-independent Caribbean Countries, for the inclusion of these countries to participate as observers in the U.N. special session to Review and Assess the Implementation of the Programme of Action of the Global Conference on the Sustainable Development of Small Island States (1999, New York), and to review the Cairo Plan of Action on Population and Development (1999, New York). Recent efforts were successful in gaining the identical observer status in the June 2001 General Assembly review of the 1996 U.N. Conference on Human Settlements, while present efforts are underway with respect to participation in the General Assembly Special Session on HIV/AIDS scheduled for June, 2001. Additionally, the associate members were granted observer status in the upcoming U.N. World Conference Against Racism, Racial Discrimination, Xenophobia, and Related Intolerance scheduled for September 2001, while efforts are underway to gain the same status in the ten-year review by the General Assembly of the 1992 Earth Summit. Most recently, the rules of procedure of the 2002 Second World Assembly on Ageing have included the observer status provision for the associate members.

After over ten years of work, the category of participation for the associate member countries in relevant world conferences and special sessions of the General Assembly seems somewhat established, although special consideration still must be sought for each conference to ensure the inclusion of the observer status category.

In order for the non-self-governing territories to achieve their full measure of self-government, and for the self-governing territories to progress economically as well as constitutionally, they must have direct access to the wide range of programmes and institutions of the U.N. system. And the U.N. system must continue its widening approach to embrace the development concerns of all small island developing countries irrespective of political status.

Notes and references

[1] See Annex to U.N. General Assembly Resolution 1541 (XV) of 1960.

[2] United Nations Association of the Virgin Islands, St. Thomas, USVI, 1999.

[3] See U.N. General Assembly Resolution 66-1 of 1950 which recognised the value to non-self-governing territories of participation in U.N. specialised agencies. In 1950, the present-day small island self-governing territories were non-self-governing.

[4] See Statement of Dr. Carlyle Corbin, Minister of State for External Affairs, Government of the U.S. Virgin Islands, to the United Nations Fourth Committee, on the agenda item "Implementation of the Decolonisation Declaration by the Specialised Agencies and the international institutions associated with the United Nations", 28th September 2000.

BEST COPY AVAILABLE

PART III

IWGIA PUBLICATIONS

BEST COPY AVAILABLE

IWGIA PUBLICATIONS 2000/2001 (May 2001)

IN ENGLISH

No. 104: Kathrin Wessendorf (ed.): *Challenging Politics: Indigenous Peoples' Experiences with Political Parties and Elections* (2001), 291 pages
US$ 19.00; GBP 13.00; DKK 150.00
ISBN: 87-90730-45-3

No. 103: Rosalva Aída Hernández Castillo (ed.): *The Other Word: Women and Violence in Chiapas Before and After Acteal* (2001), 151 pages
US$ 13.50; GBP 9.20; DKK 108.00
ISBN 87-907730-43-7

No. 102: Jens Dahl, Jack Hicks, Peter Jull (eds.): *Nunavut: Inuit Regain Control of their Lands and their Lives* (2000), 223 pages
US $ 16.00; GBP 11.20; DKK 120.00
ISBN: 87-90730-34-8

No. 101: Albert Kwokwo Barume: *Heading Towards Extinction? Indigenous Rights in Africa: The Case of the TWA of the Kahuzi-Biega National Park, Democratic Republic of Congo* (2000), 142 pages
US$ 14.00; GBP 9.80; DKK 105.00
ISBN: 87-90730-31-3

Update Report 4, *"Life is not ours": Land and Human Rights in the Chittagong Hill Tracts, Bangladesh* (2000), 101 pages
US$ 10.00, GBP 7.00; DKK 75.00
ISBN: 87-90730-42-7

No. 99: Rajkumari Chandra Roy: *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh* (2000), 231 pages
US$ 16.00; GBP 11.20; DKK 120.00
ISBN: 87-90730-29-1

No. 98: Andrew Madsen: *The Hadzabe of Tanzania. Land and Human Rights for a Hunter-Gatherer Community* (2000), 96 pages
US$ 11.00; GBP 7.70; DKK 90.00
ISBN: 87-90730-26-7

No. 97: **Marcus Colchester and Christian Erni:** *Indigenous Peoples and Protected Areas in South and Southeast Asia: From Principles to Practice* (2000), 334 pages
US$ 20.00; GBP 14.00; DKK 150.00
ISBN: 87-90730-18-6

Indigenous Affairs 2000

1/2000 The Pacific
2/2000 Hunters & Gatherers
3/2000 Indigenous Women
4/2000 Indochina

Indigenous Affairs 2001

1/2001 Racism
2/2001 Military Training
3/2001 China
4/2001 International Processes

IN SPANISH

Jens Dahl & Alejandro Parellada: *Pueblos Indígenas* (2000) 125 pages,
US$ 15.00, GBP 10.50; DKK 115.00
ISBN: 87-90730-30-5

No. 30: **Morita Carrasco:** *Los Derechos de los pueblos indígenas en Argentina* (2000), 354 pages,
US$18.00; GBP 12.60; DKK 135.00
ISBN 950-843-429-5

No. 29: **Claudia Briones, Morita Carrasco:** *Pacta sunt Servanda. Capitulaciones, Convenios y Tratados con Indígenas en Pampa y Patagonia, Argentina* (2000), 211 pages,
US$ 13.00; GBP 9.10; DKK 97.00
ISBN 950-843-423-6

Asuntos Indígenas 2000

1/2000 Latinamérica - El Pacífico
2/2000 Cazadores & Recolectores
3/2000 Mujeres Indígenas
4/2000 Indochina

Asuntos Indígenas 2001

1/2001 Racismo
2/2001 Entrenamiento Militar
3/2001 China
4/2001 Procesos Internacionales

IN FRENCH

Voix africaines. Pasteurs nomades et chasseurs-cueilleurs en Afrique subsaharienne (2001) (Translation of *Indigenous Affairs* no. 2/99 on Hunter-Gatherers and Pastoralists in Africa), 121 pages,
US$ 10.50; FRF 75.00; DKK 85.00
ISBN 2-912114-04-7

IN SWAHILI

Marianne Jensen and Greta M. Maganga (eds.) *Wenyeji Asilia Katika Afrika Mashariki, Kati Na Kusini* (Translation of *Indigenous Affairs* no. 2/99 on Hunter-Gatherers and Pastoralists in Africa) 2001, 148 pages,
US$ 10.50; GBP 7.30; DKK 85.00
ISBN 87-90730-44-5

IN TAGALOG (PHILIPPINES)

Katutubong Mamamayan
(Translation of the Spanish book *Pueblos Indígenas*) 2001, 131 pages.

IN BAHASA (INDONESIA)

Masyarakat Adat di Dunia - Eksistensi Dan Perjuangannya
(Translation of the Spanish book *Pueblos Indígenas*) 2001, 139 pages.

IN DANISH

Hvem er de indfødte folk?

2. *Van Gujar – Et skovfolk i indisk Himalaya*, Sille Stidsen & IWGIA
3. *De Indfødte Australiere*, Hanne Miriam Larsen & IWGIA
4. *Buskmennesker - Et folk i Kalahari Ørkenen*, Arthur Krasilnikoff & IWGIA
5. *Indianer i Danmark – Shuar i Ecuador*, Birgitte Feiring & IWGIA
6. *Indianske folk i Perus Andesbjerge*, Karsten Pærregaard & IWGIA
7. *Naga - Et folk mellem Indien og Burma*, Shimreichon Luithui & IWGIA

DKK 25.00, IWGIA 2000, ISSN 1399-9540

SUBSCRIPTION RATES 2001

INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD

Individuals: 40.00 US$ / 310.00 DKK
Institutions: 70.00 US$ / 545.00 DKK

INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD & BOOKS

Individuals: 95.00 US$ / 740.00 DKK
Institutions: 135.00 US$ / 1,050.00 DKK

ASUNTOS INDÍGENAS & El MUNDO INDÍGENA

Individuals: 40.00 US$ / 310.00 DKK
Institutions: 70.00 US$ / 545.00 DKK

ASUNTOS INDÍGENAS & El MUNDO INDÍGENA & LIBROS

Individuals: 75.00 US$ / 585.00 DKK
Institutions: 110.00 US$ / 860.00 DKK

IWGIA's publications are published on a non-profit basis.
Your subscription to our publications is a direct contribution to the continuing production of IWGIA's documentation and analysis of the situation of indigenous peoples worldwide.

For subscription - contact IWGIA by

e-mail: iwgia@iwgia.org
website: www.iwgia.org
or fax: +45 35 27 05 07

CONTACT ADDRESSES -- IWGIA

International Secretariat

Classensgade 11 E, DK-2100 Copenhagen, Denmark
Tel. (+45) 35 27 05 00 – Fax (+45) 35 27 05 07
E-mail: iwgia@iwgia.org - Web: www.iwgia.org

Local Groups

Denmark, Copenhagen
Classensgade 11 E, DK-2100 Copenhagen, Denmark
E-mail: wiinstedt@mail.tele.dk

Sweden, Gothenburg
c/o Inst. of Social Anthropology,
Brogatan 4, S-41 301 Gothenburg, Sweden
E-mail: iwgia@goteborg@sant.gu.se

Norway, Tromsø
c/o Sidsel Saugestad
Institut for Socialantropologi
Universitetet i Tromsø
9037 Tromsø, Norway
E-mail: sidsels@isv.uit.no

Switzerland, Zürich
c/o Ethnologisches Seminar
der Universität Zürich
Freienstrasse 5, CH-8032 Zürich, Switzerland
E-mail: daniwgia@ethno.unizh.ch

Switzerland, Basel
c/o Ethnologisches Seminar
Münsterplatz 19
CH-4051 Basel, Switzerland
E-mail: iwgia@kali.urz.unibas.ch

Russia, Moscow
Olga A. Murashko
117574, Odoevskogo, st.7-5-595, Moskow, Russia
E-mail:olga@murkre.aha.ru

THE INDIGENOUS WORLD 2000/2001

IWGIA's Yearbook – is an update on the state of affairs of indigenous peoples' of the world. Issued annually in June.

With contributors from indigenous and non-indigenous scholars and activists *The Indigenous World 2000/2001* provides an overview of the present situation and crucial developments in 2000 and early 2001 among indigenous peoples of the world.

The yearbook also contains

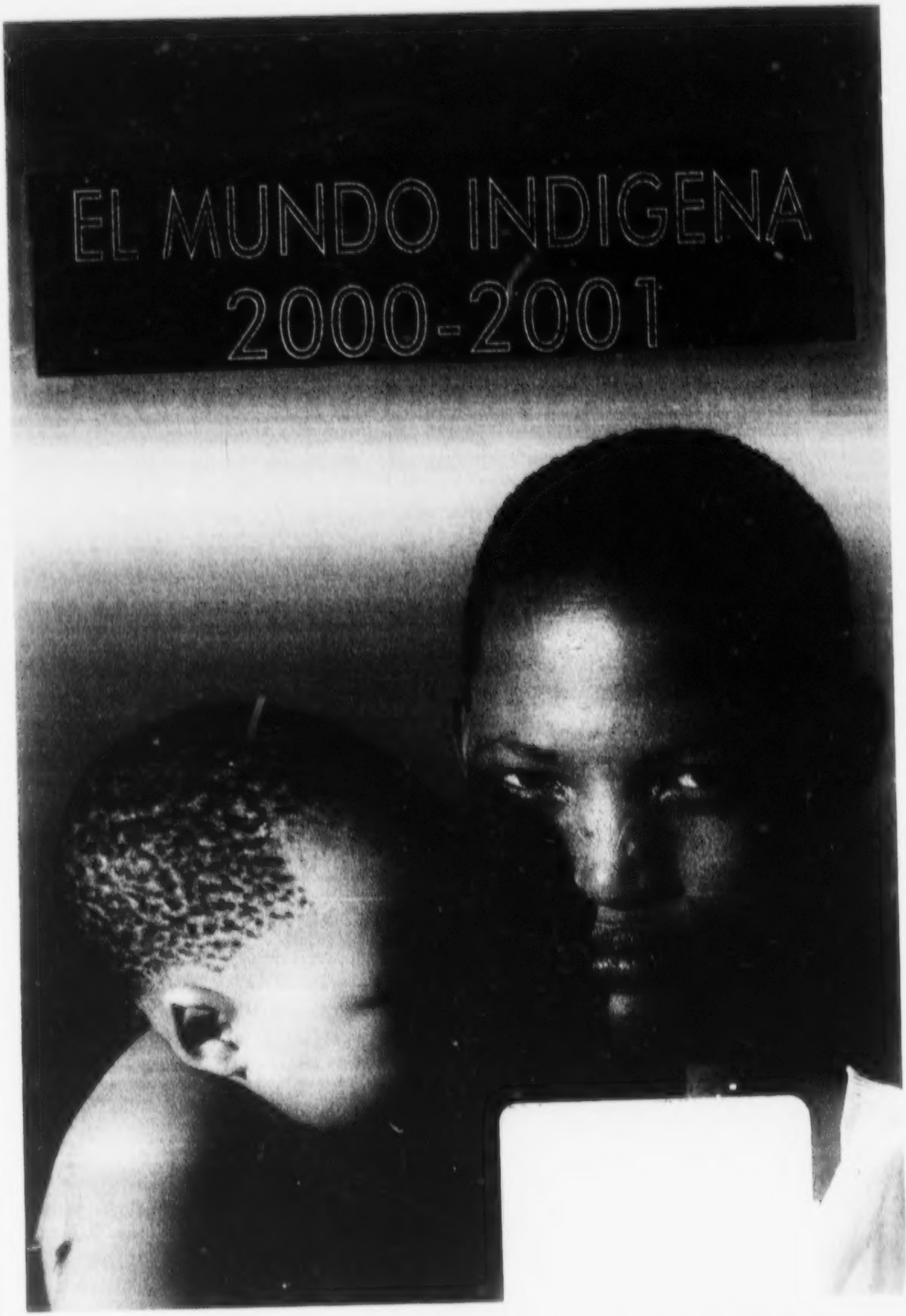
- updated information on international human rights work concerning indigenous peoples
- movements and changes in the indigenous organisational landscape.

The Indigenous World is ***the*** handbook for anyone who needs an overview of the most recent issues and movements within the indigenous world.

IWGIA
INTERNATIONAL
WORK GROUP FOR
INDIGENOUS AFFAIRS

ISBN 87-90730-48-8

BEST COPY AVAILABLE



EL MUNDO INDIGENA
2000-2001

BEST COPY AVAILABLE

EL MUNDO
INDÍGENA 2000/2001

IWGIA
Copenhague 2001

EL MUNDO INDÍGENA 2000/2001

© **Copyright:** los autores e IWGIA (Grupo Internacional de Trabajo sobre Asuntos Indígenas) 2001 - Todos los derechos reservados -

Se permite la reproducción y distribución de información contenida en *El Mundo Indígena, Asuntos Indígenas* y los libros de IWGIA en tanto se citen las fuentes. Sin embargo, la reproducción completa de libros no se autoriza sin el consentimiento de esta organización. Las opiniones expresadas en las publicaciones de IWGIA no expresan necesariamente las del Grupo de Trabajo.

La compilación y edición de este volúmen de *El Mundo Indígena* ha sido coordinada por Anette Molbech.

Cubierta, mapas y tipografía: Jorge Monrás
Traducción al español: Mario Di Lucci
Corrección de pruebas (español): Janet Ferrari
Traducción al inglés: Elaine Bolton
Corrección de pruebas (inglés): Elaine Bolton & Birgit Stephenson

Editores por región:
El Artico & América del Norte: Kathrin Wessendorf
América del Sur; Mexico & América Central;
El Pacífico & Australia: Diana Vinding
Asia: Christian Erni
Africa: Marianne Jensen
Derechos indígenas: Lola García-Alix

Impresión: Eks-Skolens Trykkeri, Copenhague, Dinamarca
ISSN: 1024-4573 - **ISBN:** 87-90730-49-6

IWGIA
GRUPO INTERNACIONAL DE TRABAJO
SOBRE ASUNTOS INDÍGENAS
Classensgade 11 E, DK 2100 - Copenhague, Dinamarca
Tel: (+45) 35 27 05 00 - Fax: (+45) 35 27 05 07
E-mail: iwgia@iwgia.org - www.iwgia.org

Este libro ha sido elaboradocon el apoyo financiero
del Ministerio Danés de Relaciones Exteriores y de la
Agencia Noruega de Cooperación para el Desarrollo

Contenido

Prefacio 8

Contribuciones 12

PARTE I: EL MUNDO INDIGENA POR REGIONES Y PAISES

- **El Artico** 24
  - El Consejo Artico 24
  - Groenlandia 26
  - Sápmi - Suiza, Rusia, Finlandia 30
  - Los pueblos indígenas de Rusia 38
  - Nunavut 43
  - Nunavik 46
- **América del Norte** 50
  - Canadá I - Primeras Naciones 50
  - Canadá II - Primeras Naciones 54
  - Canadá III - Territorios del Noroeste 56
  - Canadá IV - La nación Innu 60
  - Los Estados Unidos de América 63
- **México y América Central** 72
  - México 72
  - Guatemala 82
  - Nicaragua 87
  - Costa Rica 94
  - Panamá 98
- **America del Sur** 106
  - Venezuela 106
  - Colombia 112
  - Ecuador 119
  - Perú 126
  - Bolivia 136
  - Paraguay 146
  - Brasil 152
  - Argentina 160
  - Chile 166
- **Australia y el Pacífico** 176
  - Australia 176
  - Aotearoa (Nueva Zelanda) 184
  - Papua Occidental 192
  - Bougainville 195
  - Las islas Salomón 198
  - Kanaky (Nueva Caledonia) 201
  - Te Ao Maohi (Polinesia Francesa) 203
  - Tokelau 204
  - Fiji 205
  - Tonga 212
  - Islas Marshall 215
  - Guahan (Guam) 219
  - Ka Pae'aina (Hawai'i) 221
  - Rapa Nui (Isla de Pascua) 224

Africa del norte 228
  El pueblo amazigh 228
Africa del este 238
  Etiopia 238
  Kenia 245
  Tanzania 253
Africa Central 264
  Rwanda 264
  la República Democrática del Congo (DRC) 265
  Burundi 267
  Uganda 268
  Camerun 270
Africa del Sur 274
  Namibia 274
  Botswana 279
  Sudáfrica 286
Asia del Sur 294
  Bangladesh 294
  Nepal 301
  India 307
  Sri Lanka 326
Asia del Este & Sureste 332
  Japon 332
  China 335
  Taiwan 339
  Filipinas 343
  Timor Oriental 353
  Indonesia 359
  Malasia 373
  Tailandia 378
  Camboya 384
  Vietnam 391
  Laos 397
  Birmania 407
  Nagalim 412

PARTE II: DERECHOS INDIGENAS

Informe sobre la 6ª sesión del Grupo de Trabajo de la Comisión de Derechos Humanos relativa a la Declaración sobre los Derechos de los Pueblos Indígenas 418

El Foro Permanente de las NU sobre temas indígenas 451

Hacia la integración de países no-independientes en el sistema de las NU 458

PARTE III. IWGIA PUBLICATIONS

Publicaciones en inglés y español 2000/2001 466
Precios de suscripción 469

Direcciones de contacto - IWGIA 470

PREFACIO

La intención de *El Mundo Indígena 2000/2001* ha sido intentar reflejar los acontecimientos más cruciales que en el transcurso del último año han afectado a los pueblos indígenas en las diferentes regiones de mundo.

Es por eso que estamos enormemente agradecidos por las contribuciones que hemos recibido. Sin ellas este libro no podría haber sido publicado y nuestra intención de reflejar los progresos y retrocesos ocurridos en el mundo indígena hubiera resultado absolutamente imposible.

Un informe mundial que sea comprensivo es un objetivo ambicioso, y somos concientes que este ejemplar de *El Mundo Indígena* contiene omisiones e insuficiencias en cuanto a la cobertura de los temas, pueblos y países. Por otra parte, los artículos reflejan naturalmente los diferentes puntos de enfoque que los autores han tomado al escribir sobre un terreno específico. Hemos decidido mantener los artículos como tales dado que consideramos importante conservar la autenticidad de los informes aquí publicados. Esto llevará a algunos lectores a la conclusión de que *El Mundo Indígena* es un libro "para iniciados" que requiere algo más que un mínimo de conocimientos respecto a áreas y pueblos específicos. Sin embargo, la intención del libro es reflejar lo ocurrido o lo que llevó a la situación en la que se encuentra un área determinada en el año transcurrido desde la última edición.

Un libro detallado sobre el mundo indígena sería magnífico, pero representa un objetivo que requeriría esfuerzos de investigación para los que no estamos en condiciones. Los aportes han sido escritos por un basto número de autores indígenas y no-indígenas sobre una base enteramente voluntaria. Estamos agradecidos de haber podido envolver a tantas personas en este volumen, personas que usaron su escaso tiempo para contribuir a este "mosaico" de reflexiones sobre el mundo indígena.

Estamos muy satisfechos este año de haber podido cubrir acontecimientos en China, América del Norte, Laos, Vietnam, Nueva Zelanda así como una serie de islas del Pacífico que no fueron incluídos el año pasado. Sin embargo, hubiéramos querido ofrecer información más detallada respecto a la crítica situación en Birmania, pero se vio que era imposible dado el limitado tiempo de que disponíamos. También nos complace poder cubrir nuevamente Etiopía, a pesar de que el artículo hace eje en una parte específica del país, habiendo otros pueblos y regiones que deberían haber sido incluídas.

Aunque siempre nos esforzaremos por obtener un libro lo más completo posible, nuestra limitada capacidad de recursos no nos permiten cubrir el mundo como es, en todos sus aspectos. Agradeceríamos por lo tanto los comentarios que pudieran hacernos, las sugerencias y, si fuera posible, aportes concretos para el volumen del próximo año, que esperamos realizar de una manera más acabada.

Anette Molbech
Editora coordinadora

CONTRIBUCIONES

BEST COPY AVAILABLE

CONTRIBUCIONES

IWGIA desearía expresar su caluroso agradecimiento a las siguientes personas y organizaciones por haber contribuido con *El Mundo Indígena 2000/2001*. Quisiéramos agradecer también a aquellos autores que han deseado contribuir anónimamente y no se encuentran, por lo tanto, en esta lista. Este libro no hubiera podido publicarse sin el aporte de todas estas personas.

PARTE I

EL ARTICO Y AMERICA DEL NORTE

Esta sección ha sido compilada y editada por Kathrin Wessendorf, Coordinadora del Programa para el Ártico de IWGIA.

Marianne Lykke Thomsen ha estado vinculada a IWGIA durante muchos años. Trabajó para la Conferencia Circumpolar Inuit, el Gobierno Autónomo de Groenlandia, Oficina de Relaciones Internacionales. Marianne Lykke Thomsen es la representante del Gobierno Autónomo de Groenlandia en Ottawa (*El Consejo Ártico*).

Mattias Åhrén es *saami* y trabaja como socio en la firma de abogados Danowsky & Partners, en Estocolmo. También trabaja para el Consejo Saami (*Sápmi, Suecia*).

Leif Rantala es maestro de la lengua y la cultura *sami* en la Universidad de Lapland (en Rovaniemi, Finlandia). Leif Rantala está especializado en los sami rusos (*Rusia y Finlandia*).

Olga Murashko es antropóloga, cofundadora del grupo local de IWGIA en Rusia y actualmente es miembro del Consejo Directivo de IWGIA (*Rusia – Pueblos Indígenas en Rusia*).

Helle Høgh está haciendo un Doctorado en el Departamento de Etnografía y Antropología Social de Aarhus, Dinamarca. Helle Høgh realizó trabajo de campo en Nunavut en 1996 y 1999 *(Nunavut)*.

Michael Posluns es observador informante sobre discusiones de asuntos relativos a las Primeras Naciones en el Parlamento canadiense. Actualmente está completando una disertación doctoral sobre el testimonio de las Primeras Naciones ante los comités parlamentarios canadienses en

BEST COPY AVAILABLE

los años 70 titulada "La emergencia pública del vocabulario del autogobierno de las Primeras Naciones" (*Canadá: Relaciones de las Primeras Naciones al final del Segundo Milenio*).

Russel Diabo es miembro de la Nación Mohawk en Kahnawake, Quebec. Tiene un B.A. en Estudios Nativos de la Universidad Laurenciana de Canadá y ha realizado estudios de posgrado para un M.A. en la Universidad de Arizona y la Universidad Carleton en Ottawa.

El Sr. Diabo fue el Coordinador sobre Enmiendas de la Ley India para la Asamblea de Primeras Naciones durante 1996-97. Actualmente es asesor de la Alianza Interior de Naciones Indígenas de Columbia Británica, Canadá (*Canadá: Ley de Gobierno de las Primeras Naciones y Ley de Instituciones Financieras de las Primeras Naciones*).

Jim Edmonson ha trabajado para organizaciones aborígenes a nivel nacional, regional y comunitario desde 1985, principalmente como asesor y negociador en conversaciones con el gobierno federal y los gobiernos territoriales sobre demandas de tierra y autonomía (*Territorios del Noroeste*).

Georg Henriksen, antropólogo, profesor del Instituto de Antropología Social de la Universidad de Bergen, Noruega. Presidente del Consejo Internacional de IWGIA. Ha trabajado extensamente con los *innu*. (*La Nación Innu*).

Martha McCollough es antropóloga cultural del Departamento de Antropología y Estudios Étnicos de la Universidad de Nebraska. Su área de interés en la investigación incluye las relaciones entre los estados y las sociedades no-estatales. Actualmente está trabajando en un libro que analiza el terrorismo anterior a la era de la reservación en los Estados Unidos (*EE.UU.*)

MEXICO, AMERICA CENTRAL Y AMERICA DEL SUR

Esta sección ha sido compilada y editada por Diana Vinding, Coordinadora del Programa para América Latina y el Pacífico de IWGIA.

Araceli Burguete Cal y Mayor es socióloga e investigadora en el Centro de Investigación y Estudios Superiores de Antropología Social (CIESAS) y asesora de la organización indígena ANIPA (*México*).

Kajkoj Máximo Abrahan Ba Tiul, es *maya poqomchi*, filósofo y antropólogo. Trabajó para la Coordinadora de ONGs y Cooperativas –

CONGCOOP- y fue miembro del Nukuj Ajpop y de COPMAGUA. Actualmente es Director del Programa de Difusión a la Sociedad Civil del Comité Internacional de la Cruz Roja y articulista de *El Periódico (Guatemala)*.

Margarita Antonio es periodista *miskita*, del Atlántico Norte de Nicaragua, y actualmente directora del programa de Comunicación de la Universidad de las Regiones Autónomas de la Costa Caribe Nicaragüense, URACCAN, y editora del periódico *Autonomía*. Es representante nicaragüense de la Asociación Mundial de Radios Comunitarias, AMARC (*Nicaragua*).

Gilbert González Maroto es indígena *brunca* y dirige el Centro para el Desarrollo Indígena (CEDIN S.A.) en Puntarenas, Costa Rica. Se puede visitar el Centro en http://www.cedin.iwarp.com (*Costa Rica*).

Atencio López es indígena *kuna* y abogado. Es el Presidente de la ONG "Napguana" (*Panamá*).

Luis Jesús Bello es abogado, Defensor del Pueblo del Estado Amazonas y Miembro de la Oficina de Derechos Humanos del Vicariato de Puerto Ayacucho. Es también asesor de la Organización Regional de Pueblos Indígenas de Amazonas (ORPIA) y la Comisión Permanente de Pueblos Indígenas de la Asamblea Nacional de Venezuela (*Venezuela*).

Alberto Achito Lubia es indígena *embera* de Juradó (Chocó). Dirigente destacado del Pacífico colombiano. Miembro fundador de la OREWA, de la cual fue presidente. Actualmente es el coordinador del área ambiental de la Organización Nacional Indígena de Colombia, ONIC y miembro de la Coordinadora Indígena del Pacífico. Su sección sobre Colombia la dedica a su hermano, Armando Achito Lubiaza, líder embera que fue asesinado por paramilitares en diciembre de 2000 (*Colombia*).

Carlos Viteri es *quechua* amazónico de Ecuador, antropólogo y asesor de la diputada quechua Nina Pacari Vega (*Ecuador*).

Pedro García Hierro, abogado, es Presidente de la ONG "Racimos de Ungurahui" con sede en Lima, Perú. Es autor del Documento IWGIA *Territorios Indígenas y la Nueva Legislación Agraria en el Perú* (*Perú*).

Leonardo Tamburini y ***Ana Cecilia Betancur***, abogados, trabajan en el Centro de Estudios Jurídicos e Investigación Social – CEJIS, de Santa Cruz, Bolivia. El primero es Coordinador del Programa Indígena y la segunda es Cooperante del Servicio Holandés de Cooperación para el

Desarrollo. La información ha sido proporcionada por las oficinas del CEJIS Santa Cruz, Trinidad, Riberalta y Cochabamba, regiones donde la institución asesora a organizaciones indígenas y campesinas en los procesos de titulación de tierras y en la defensa de sus derechos *(Bolivia)*.

Rodrigo Villagra, es antropólogo y abogado y trabaja en TIERRAVIVA, una ONG de Paraguay, desde 1994 (*Paraguay*).

Christian Groes-Green es estudiante de antropología de la Universidad de Copenhague. En la actualidad está en Manaos, Brasil, realizando trabajo de campo con el pueblo *satere mawe* (*Brasil*).

Morita Carrasco es antropóloga y profesora en la Universidad de Buenos Aires, Argentina. Es la autora del Documento IWGIA *La Tierra que nos Quitaron* sobre los indígenas de Argentina (*Argentina*).

Dorthe Kristensen, tiene una Maestría en Antropología de la Universidad de Londres. Durante muchos años fue miembro del Grupo Nacional de IWGIA en Dinamarca. En 1999-2000 realizó investigación de campo en Chile relativa a temas de identidad y política relacionados con la medicina tradicional y la religión (*Chile*).

AUSTRALIA Y EL PACÍFICO

Esta sección ha sido compilada y editada por Diana Vinding, Coordinadora del Programa para el Pacífico y América Latina de IWGIA.

Peter Jull y ***Kathryn Bennett*** investigan y escriben sobre política indígena en el contexto internacional en la Escuela de Ciencias Políticas y Estudios Internacionales, Universidad de Queensland, Brisbane, Australia *(Australia)*.

Taki Anaru es abogado y procurador de Aotearoa / Nueva Zelanda. Hasta hace poco era el Abogado Decano del Servicio Legal Maori. Ahora vive y trabaja en las Islas Cook *(Nueva Zelanda)*.

Jimmy Nâunâå es el Director Asistente-Descolonización y Derechos Indígenas del Centro de Recursos sobre Asuntos del Pacífico (PCRC) en Suva, Islas Fiji. Compiló y editó el informe sobre el Pacífico, el cual también contiene contribuciones del Director del PCRC y sus colegas Directores Asistentes en sus áreas específicas de especialización *(El Pacífico)*.

AFRICA

Esta sección ha sido compilada y editada por Marianne Jensen, Coordinadora del Programa para África y editora de la publicación trimestral *Asuntos Indígenas*.

África del Norte

Hassan Idbalkassm es un *amazigh* de Marruecos. Es abogado y Presidente de la asociación amazigh "Tamaynut" la cual fundó en 1978. También es Vicepresidente del "Congrés Mondial Amazigh" que está integrado por más de 70 asociaciones amazigh del Norte de África y Europa. *(África del Norte: La situación de los pueblos amazigh).*

Africa Oriental

Nyikaw Abula Ochalla es un indígena *anuak* del Estado Nacional Gambela. Obtuvo su grado de gestión y administración pública en la Universidad de Addis Ababa, Etiopía. Después de su graduación trabajó para el gobierno federal y el local. Actualmente vive en el R.U. pues solicitó asilo político en 1999 debido a las profusamente informadas violaciones de derechos humanos y la persecución realizada por el gobierno etíope. Es fundador de la organización política no-violenta el "Congreso Democrático de los Pueblos Gambela" y la organización indígena "Organización de Supervivencia Anywaa" que defiende los derechos de los indígenas de la Nación Gambela dentro de Etiopía y Sudán (*Etiopía*).

Naomi Kipuri es *maasai* del distrito Kajiado, Kenia. Es antropóloga y fue profesora de la Universidad de Nairobi, siendo ahora consultora sobre temas de desarrollo. Hace investigaciones y trabajo de desarrollo y está interesada en temas de desarrollo relacionados con los derechos humanos y los derechos de los pueblos indígenas (*Kenia*).

Benedict Ole Nangoro es *maasai* de Kiteto, Tanzania. Tiene una Maestría en Estudios sobre el Desarrollo del Instituto de Estudios sobre el Desarrollo de la Universidad de Sussex, R.U. Actualmente está trabajando con CORDS, una ONG local que trabaja con comunidades indígenas pastoras maasai sobre demarcación de tierras, cartografiado, registro y titulación colectiva. *(Tanzania).*

Africa Central

Dorothy Jackson es la Coordinadora del Programa para África del Programa para los Pueblos del Bosque. ***Justin Kenrick*** es antropólogo de la Universidad de Edimburgo y jefe del proyecto Uganda del Programa para los Pueblos del Bosque (*La Región de los Grandes Lagos y Camerún*).

Africa del Sur

Magdalena Brörmann es una educadora que ha hecho servicio como trabajadora del desarrollo en los campos del desarrollo de la niñez temprana, capacitación en-servicio de maestros y educación adulta en diversos países africanos durante más de dos décadas. Actualmente está trabajando como mentora para jóvenes *san* en capacitación en la oficina regional de WIMSA, en Windhoek, Namibia (*Namibia*).

Robert K. Hitchcock es Profesor de Antropología y Geografía y es el Coordinador de Estudios Africanos en la Universidad de Nebraska-Lincoln, Lincoln, Nebraska, EE.UU. También es el coordinador de la Iniciativa por los Derechos Humanos y la Diversidad Humana, un programa financiado por el Colegio de Artes y Ciencias UNL y la Fundación Ford. Hitchcock ha pasado gran parte de las dos décadas y media pasadas trabajando con los *san* de África del Sur, donde se ha concentrado en temas relativos al desarrollo, derechos humanos y habilitación. Hitchcock es el autor de *Comunidades del Kalahari: Bosquimanos y la Política del Medio Ambiente en el Sur de África* (Copenhague: Grupo Internacional de Trabajo sobre Asuntos Indígenas, 1996) y es coeditor de *Cazadores y Recolectores en el Mundo Moderno: Conflicto, Resistencia y Autodeterminación* (Nueva York: Berghahn Books, 2000) *(Botswana)*.

Nigel Crawhall es un activista de los derechos de los pueblos indígenas. Trabajó con el Comité Coordinador de los Pueblos Indígenas de África (IPACC) y es director de proyecto de un proyecto de manejo y capacitación sobre conocimiento indígena y recursos culturales del Instituto San Sudafricano (SASI) *(Sudáfrica)*.

ASIA

Esta sección ha sido compilada, editada y en parte redactada por Christian Erni, Coordinador del Programa para Asia de IWGIA.

Asia del Sur

Parshu Ram Tamang es Profesor Superior de Economía en Sarawati Múltiple Campus, Universidad Tribhuvan, Kathmandu, Nepal. Es miembro fundador, hasta hace poco Secretario General y actualmente asesor de la

Federación de las Nacionalidades de Nepal (NEFEN). También es Presidente de Nepal Tamang Ghedung (NTG) *(Nepal)*.

C. R. Bijoy, activista de los derechos humanos. Durante los últimos dieciséis años ha participado y ha estado vinculado con los temas indígenas y la organización en India y ha escrito sobre estos temas y otros temas vinculados. ***Walter Fernandes*** ha estado trabajando sobre temas tribales en India durante dos décadas. Es el ex director del Instituto Social Indio, Nueva Delhi y editor de Acción Social. Actualmente es director de Centro de Investigaciones Sociales del Nordeste. ***Samar Bosu Mullick*** es un activista político, maestro e investigador que ha trabajado en solidaridad con los pueblos indígenas de Jharkand durante el último cuarto de siglo. Fue uno de los pilares del movimiento Jharkand por un estado separado (*India*).

Wiveca Stegeborn es antropóloga (M.A. de la Universidad del Estado de Washington, EE.UU) vinculada a la Universidad de Tromsoe, Noruega, donde presentará su disertación doctoral. Ha realizado investigaciones entre los *wanniyala-aetto* de Sri-Lanka desde 1977 (*Sri Lanka*).

Asia Oriental y Sudoriental

Masaharu Konaka trabajó como secretario para la Liga Buraku para la Liberación, Tokio, durante varios años. Desde que volvió a Sapporo, se ha dedicado al trabajo de traducción para las actividades del pueblo *ainu*. ***Robert E. Gettings***, Profesor Adjunto de la Escuela Semisuperior de Mujeres de Hokusei, tuvo la amabilidad de revisar y corregir el texto en inglés. Nació en Boston en 1952 y está muy interesado en los movimientos indígenas. (*Japón*).

Harald Bøckman es sinólogo, Miembro Investigador del Instituto Nacional de Investigación sobre la Paz, Oslo, Noruega. Su campo principal de investigación es el surgimiento histórico de China y la relación entre China y sus vecinos en una perspectiva histórica (*China*).

La ***Asociación para Políticas de Pueblos Indígenas de Taiwán (ATIPP)*** es una ONG establecida y administrada por activistas indígenas taiwaneses. ATIPP trabaja por el fortalecimiento y habilitación de los pueblos indígenas de Taiwán y, como grupo de investigación y defensoría, ATIPP busca promover los derechos de los pueblos indígenas de Taiwán a través de la legislación, trabajo de "lobby" legislativo y otros medios (*Taiwán*).

AnthroWatch es un grupo de investigación y defensoría con sede en Manila que trabaja estrechamente con pueblos indígenas de las Filipinas. ***Joan Carling*** es Secretaria General de la Alianza de los Pueblos de la Cordillera (CPA) con sede en Baguio, en las Cordilleras del Norte de Luzon, Filipinas. ***Jimid Mansayagan*** es un *erumanen ne menuvu* de Mindanao Central. Ha sido Secretario General de Lumad Mindanaw (Federación de Pueblos) durante once años y está actualmente comprometido con un movimiento indígena de base aldeana llamado Kebager te Ked-Inged. *Michael P. Lacson* es el secretario nacional de Bansa Palawan (Alianza Indígena por la Equidad y el Bienestar). *Dario Novellino* es asesor internacional de la misma organización. Actualmente está asociado con el Departamento de Antropología de la Universidad de Kent, en Canterbury (R.U.) y con el Instituto de la Cultura Filipina, Ateneo de la Universidad de Manila. (*Filipinas*).

Torben Retbøll enseña Historia y Latín en la Katedralskole de Aarhus, Dinamarca. Ha escrito y editado varios libros sobre los medios de difusión y asuntos internacionales, incluyendo tres documentos de IWGIA sobre Timor Oriental publicados en 1980, 1984 y 1998 (*Timor Oriental*).

Danilo Geiger es antropólogo social y trabaja actualmente en el Departamento de Antropología Social de la Universidad de Zurich, Suiza. Es uno de los miembros fundadores del Grupo Nacional IWGIA Suiza y ha vivido y trabajado intensamente con los pueblos indígenas de las Filipinas e Indonesia. ***Emilianus Ola Kleden*** es el Jefe de Información y Comunicación de la Oficina del Secretariado de la organización nacional "paraguas" de pueblos indígenas, AMAN (Alyansi Masyarakat Adat Nusantara) (*Indonesia*).

Colin Nicolas es el coordinador del Centro de Intereses Orang Asli (COAC), Kuala Lumpur, Malasia (*Malasia*).

Wiwat Tamee es un *lisu*, ha asumido un creciente rol en la defensoría relativa a los derechos y temas indígenas en su país natal, Tailandia. Actualmente es director del Centro para la Coordinación de Organizaciones No-Gubernamentales para el Desarrollo Tribal en Chiang Mai, Tailandia (*Tailandia*).

Hanneke Meijers es consultora sobre temas de género y recursos naturales. Ella ha trabajado en Asia, África y Asia Sudoriental. Desde 1990 vive y trabaja en Camboya (*Camboya*).

Luingam Luithui, un *tangkhul naga*, es defensor de los derechos humanos. Durante veinticinco años ha estado activamente comprometido en el trabajo de red local y regional de pueblos indígenas y en la construcción de una alianza con ONGs (*Nagalim*).

PARTE II

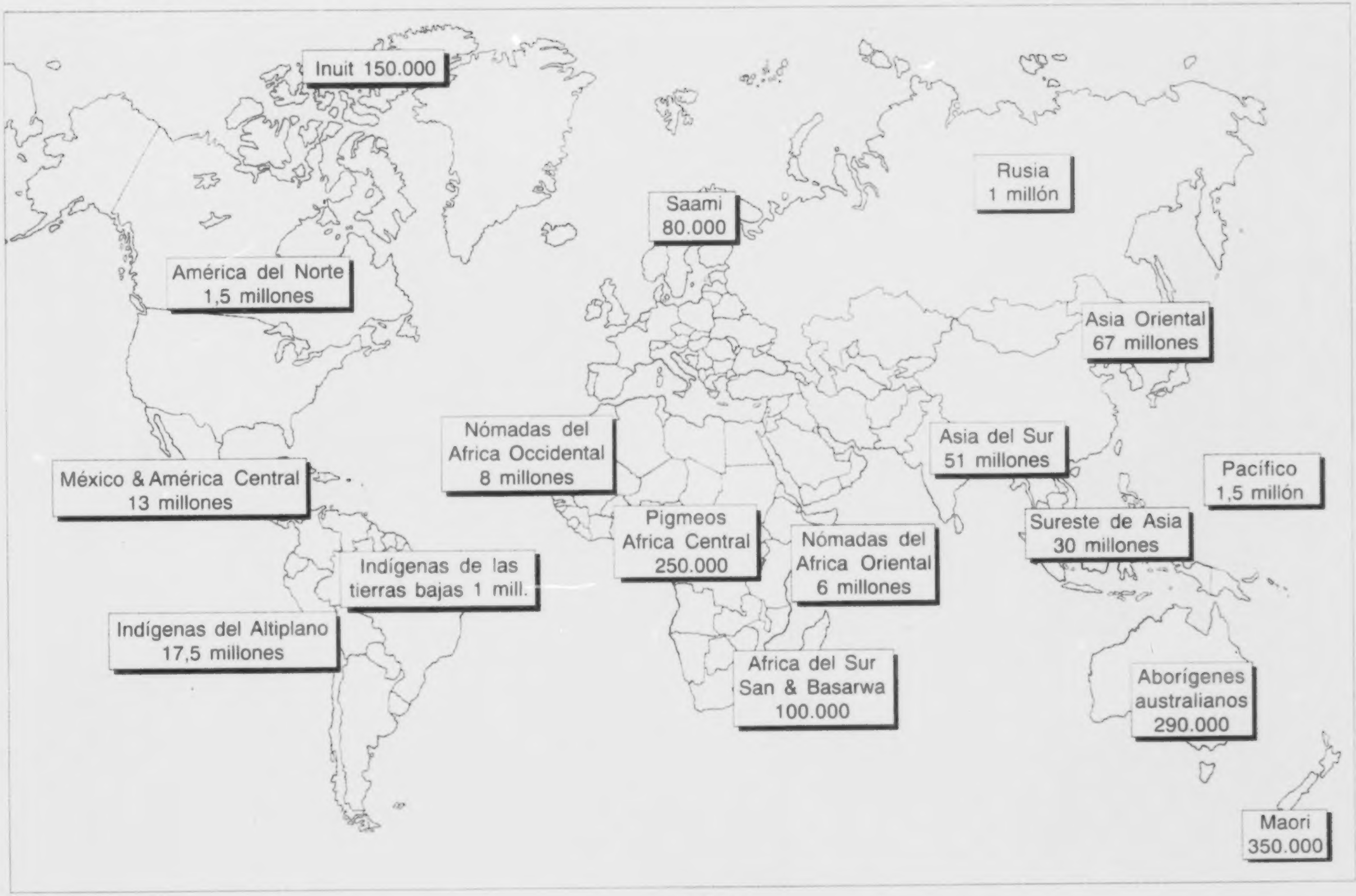
DERECHOS INDÍGENAS

Esta sección ha sido compilada y editada por Lola García-Alix, Coordinadora del Programa de Derechos Humanos de IWGIA.

Dra. Sarah Pritchard, abogada australiana y académica de la Facultad de Derecho de la Universidad de New South Wales. Ha trabajado durante algunos años con las organizaciones aborígenes de Australia y en las Naciones Unidas (*Naciones Unidas: la 6ª sesión del Grupo de Trabajo de la Comisión de Derechos Humanos relativa a la Declaración sobre los Derechos de los Pueblos Indígenas*).

Lola García-Alix es Coordinadora de las Actividades de Derechos Humanos de IWGIA (*Las Naciones Unidas: El Foro Permanente para los Pueblos Indígenas*).

Carlyle Corbin, es Ministro de Estado para Relaciones Exteriores de las Islas Vírgenes de los EE.UU. Cumple las funciones de Secretario General del Foro de Gobernadores Isleños integrado por los gobiernos electos de Guam, Samoa Americana, la Mancomunidad de las Islas Marianas Septentrionales y las Islas Vírgenes de los EE.UU. Ha participado desde 1982 en las actividades del Comité Especial de las Naciones Unidas sobre Descolonización. (*Naciones Unidas: Hacia la Integración de Países No-Independientes en el Sistema de las Naciones Unidas*).


Inuit 150.000
Saami
80.000
Rusia
1 millón
América del Norte
1,5 millones
Asia Oriental
67 millones
Nómadas del
Africa Occidental
8 millones
Asia del Sur
51 millones
Pacífico
1,5 millón
México & América Central
13 millones
Pigmeos
Africa Central
250.000
Nómadas del
Africa Oriental
6 millones
Sureste de Asia
30 millones
Indígenas de las
tierras bajas 1 mill.
Indígenas del Altiplano
17,5 millones
Africa del Sur
San & Basarwa
100.000
Aborígenes
australianos
290.000
Maori
350.000

BEST COPY AVAILABLE

PARTE I

EL MUNDO INDIGENA
POR REGIONES Y PAISES

EL ARTICO

BEST COPY AVAILABLE

EL CONSEJO ARTICO

La segunda reunión del Consejo Ministerial Ártico fue celebrada en Barrow, Alaska, en octubre del año pasado. Los pueblos de Barrow y North Slope Borough -conocidos por su gran hospitalidad- fueron los anfitriones de la reunión, que tuvo lugar en medio de la caza de la ballena cabeza arqueada o ballena de Groenlandia, brindando así el mejor alimento y excitación a la reunión internacional.

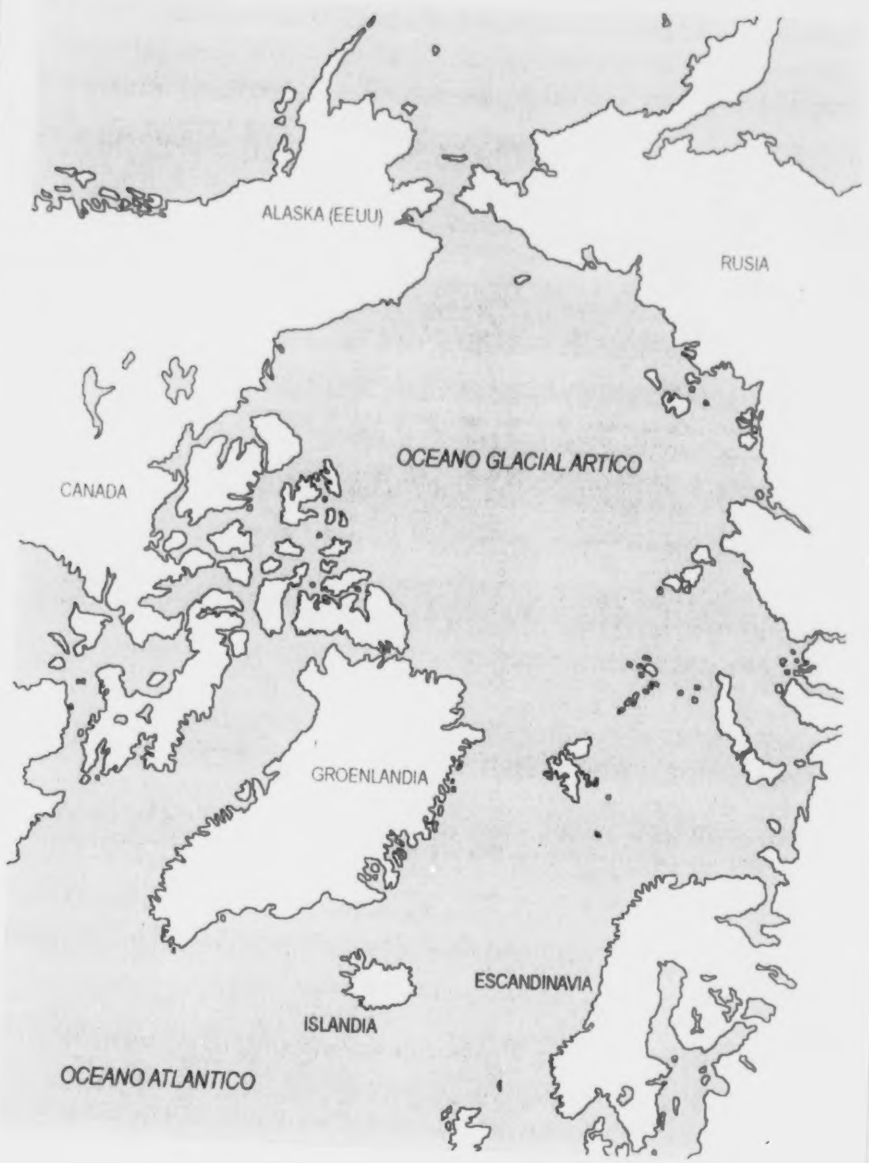
El Consejo Ártico dio la bienvenida a dos nuevos miembros como Participantes Permanentes, el Consejo Internacional Gwich'in y el Consejo Ártico Athabaskano. Las dos organizaciones representan a los pueblos de habla *gwich'in* y *athabaskana* de Canada y Alaska.

El Primer Ministro de Groenlandia, Johathan Motzfeldt, quien encabezaba la Delegación conjunta dano-faroense-groenlandesa en nombre del Reino de Dinamarca, dejo claro en su discurso de apertura que es importante que el Consejo Ártico se convierta en un foro accesible y de interés para los pueblos que viven actualmente en el Ártico. El Primer Ministro notó con satisfacción que la iniciativa groenlandesa para conducir una investigación circumpolar de las condiciones de vida de los pueblos del Ártico fuera adoptada por el Consejo.

Otro logro importante durante la reunión Ministerial fue la adopción de una "estrategia" para el desarrollo sustentable en forma de un llamado documento-marco, el cual establece algunos principios directivos importantes para el trabajo futuro del Consejo y del Grupo de Trabajo para el Desarrollo Sustentable (SDWG).

El Plan de Acción del Consejo Ártico (ACAP) fue apoyado por el Consejo Ártico como una estrategia abarcadora para reducir y eliminar la polución del medio ambiente Ártico. Finalmente, se decidió seguir adelante con la Evaluación de Impacto Climático del Ártico (ACIA), la cual tiene la intención de convertirse en un estudio comprehensivo del impacto ambiental, sanitario, social y económico del cambio climático del Ártico.

La reunión del Consejo Ministerial Ártico concluyó con la firma de la Declaración de Barrow, el plan de trabajo para los próximos dos años bajo la Presidencia Finlandesa. La Presidencia Finlandesa celebra este año el décimo Aniversario de la Declaración de Rovaniemi -de la llamada Iniciativa Finlandesa- declarando la elaboración y la implementación de una Estrategia Ambiental de Protección del Ártico (AEPS). La AEPS, que ahora está incorporada al Consejo Ártico, ha probado ser una estrategia ambiental muy exitosa.


ALASKA (EEUU)
RUSIA
OCEANO GLACIAL ARTICO
CANADA
GROENLANDIA
ESCANDINAVIA
ISLANDIA
OCEANO ATLANTICO

EL ARTICO

BEST COPY AVAILABLE

GROENLANDIA

La Defensa Nacional Balística

En el ámbito de la política exterior, una gran parte de la discusión estuvo centrada durante todo el año en una deidad – todos hablan de ella pero nadie la ha visto: la Defensa Nacional Balística (NMD) tras la cual EE.UU. quiere escudarse contra ataques de misiles de estados villanos como Corea del Norte e Iraq. La base militar norteamericana restante en Groenlandia, la Base Aérea de Thule, ha sido incluida en los planes y sería usada como una estación para rastrear la llegada de misiles. Tanto el gobierno danés como el groenlandés se han negado a tomar posición sobre el tema, alegando que todavía no han recibido una solicitud oficial de los Estados Unidos. El medio institucional norteamericana parece estar de acuerdo en llevar a cabo los planes, especialmente la nueva administración, pero todas las pruebas que se realizaron hasta ahora han fallado. Los planes para desarrollar una NMD han recibido críticas de los aliados europeos, pero Dinamarca continúa sin comprometerse. No obstante, si tuviéramos que analizar el silencio del gobierno danés, se parece más a una callada aceptación, porque históricamente Dinamarca siempre ha querido complacer al "Gran Hermano", como en los diferentes casos de reasentamiento forzado de la población local en 1953, el despliegue de arsenales nucleares en Groenlandia contra la política oficial de un Reino Danés libre de armas nucleares, y la contaminación ambiental que muestran las bases americanas abandonadas a expensas de los intereses groenlandeses. La opinión oficial del gobierno groenlandés ha sido que la NMD no debería poner en peligro la proliferación nuclear y que los EE.UU. deberían ponerse de acuerdo con Rusia en lo que respecta a la compatibilidad del Tratado AbM de 1972. La última demanda, y también la más importante, es que Groenlandia debería sentarse en la mesa en que se discute el tema con los EE.UU.

El tema tiene el potencial de crear una división en el gobierno de coalición de Groenlandia, entre Siumut e Inuit Ataqatigiit. El partido que responde a la Social Democracia, Siumut, ha sido más cauteloso en cuanto a expresar una opinión clara, citando las condiciones antes mencionadas, mientras que el partido socialista Inuit Ataqatigiit rechazó estentóreamente la idea de crear la NMD y mucho menos involucrar a la Base Aérea de Thule en la misma. Pero además de ser un tema político candente, tiene una importancia mucho más fundamental para la creciente necesidad de desarrollar una capacidad de política exterior, pues Groenlandia ha demandado ser incluida en el proceso de toma de decisiones, en lugar de que Dinamarca accione sola en nombre de Groenlandia. Dinamarca ha sido bastante reacia en el pasado a compartir su poder de toma de decisiones con Groenlandia, particularmente en la esfera de la política de seguridad, especialmente desde que Dinamarca, en el transcurso de los años, se beneficiara de la presencia americana en Groenlandia con relación a la OTAN. Pero como la autonomía de Groenlandia está evolucionando en el área de la política exterior, Dinamarca ya no puede ignorar la opinión de los groenlandeses y esto creará una crisis política entre los dos países si Dinamarca va en contra de la opinión de Groenlandia en este tema. Los sentimientos daneses de culpa por esconder información a los groenlandeses sobre el despliegue de misiles nucleares durante los años '50 y '60, junto con la forzada reubicación de la población local en 1953 cuando la base estaba siendo ampliada, así como también la caída de un bombardero B-52 en 1968 con cuatro bombas de hidrógeno y sus consecuencias ambientales están para los daneses demasiado vívidos históricamente como para negar a los groenlandeses que opinen en este asunto – cualquiera que sea el resultado.

La integración de daneses en la sociedad

El debate idiomático siguió creando controversias, unido al tema de la integración a la sociedad de los daneses que viven en Groenlandia. Los críticos alegan que el idioma danés es demasiado dominante en la esfera de la administración pública después de 22 años de Gobierno Autónomo y que las personas dano-parlantes son promovidas a expensas de los groenlandeses calificados. El hecho de que muchos de los cargos académicos en la administración pública están llenos de daneses, pues hay una carencia de personas de habla groenlandesa con grados académicos demuestra, según los críticos, que la política gubernamental en el campo de la educación ha fracasado. Otros dicen que es expresión de un continuo colonialismo. Los críticos dicen además que poder hablar groenlandés debería ser un requisito para ocupar un cargo en la sociedad groenlandesa. Muchos de los daneses que van a trabajar a Groenlandia, permanecen allí sólo 2 o 3 años y no tienen oportunidad de aprender la lengua ya que no existe ninguna política o programa establecidos para integrarlos a la sociedad y ofrecerles cursos idiomáticos intensivos. Sin embargo, también se subraya frecuentemente que se debería culpar al sistema educacional por no otorgar a los groenlandeses la capacitación necesaria en lenguas extranjeras que les posibilite adquirir una educación superior.

El tema puede entonces ser caracterizado como una frustración ante el hecho de que después de 22 años de estar a cargo de planificar y ejecutar políticas, Groenlandia no ha sido capaz de educar a tantas personas como sería necesario para ocupar los cargos que requieren prolongados e intensos estudios universitarios en todos los diferentes campos. Groenlandia ha invertido fuertemente en educación y ha otorgado a sus jóvenes oportunidades beneficiosas para obtener una educación. Había grandes esperanzas de revertir el dominio histórico de los daneses en los cargos de dirección cuando Groenlandia adquirió la autonomía en 1979. Pero aunque ha habido una creciente cantidad de groenlandeses en cargos directivos y académicos, el hecho de que Groenlandia pasara de ser una sociedad tradicionalmente cazadora a una sociedad industrial moderna, muestra que lleva largo tiempo crear una población bien educada a partir de una población que no ha tenido tradición de adquirir educación académica. Además de todo esto, un estudio reciente entre estudiantes universitarios que estudian en Dinamarca mostró que era más probable que provinieran de una familia mixta, con un progenitor danés y otro groenlandés, que lo opuesto.

El mencionado estudio también mostró que en Groenlandia existe un prejuicio contra los estudiantes que carecen de habilidades lingüísticas en groenlandés y se sienten inferiores al resto de la sociedad porque no pueden hablar muy bien su lengua materna. Esto podría explicar en parte por qué una gran cantidad de groenlandeses con una educación superior permanece en Dinamarca al finalizar sus estudios. Así, aunque sólo unos pocos groenlandeses se graduaron en ingeniería y a pesar de las muchas oportunidades laborales que hay en Groenlandia, la mayoría se establece en Dinamarca.

Aunque en general los dos grupos funcionan bien juntos, el tema del idioma se usa frecuentemente con propósitos políticos. No obstante, cualquiera que sean los puntos de vista, parece que existe un acuerdo general de que hay que realizar inversiones importantes en el sistema educacional, antes que nada en el área de la educación primaria pero también con respecto a la educación de los maestros groenlandeses. Muchos maestros en Groenlandia hablan sólo danés pero el desafío real de las autoridades del Gobierno Autónomo es la educación de los maestros groenlandeses.

La Comisión sobre Autonomía de Groenlandia

A fines de 1999, el Primer Ministro de Groenlandia, Jonathan Motzfeldt, presentó una Comisión sobre Autonomía para que examinara la futura situación de Groenlandia como parte del reino danés (ver *El Mundo Indígena 1999-2000*). Los miembros de la Comisión son todos prominentes políticos groenlandeses. La Comisión estableció Grupos de Trabajo y, a comienzos de 2001, se convocó una conferencia en Nuuk para discutir temas de seguridad y defensa.

Todos los partidos políticos de Groenlandia tienen como tema en su agenda política una mayor autonomía. Más de 20 años de Gobierno Autónomo han revelado la necesidad de reconsiderar la existente división de responsabilidades entre Dinamarca y Groenlandia, incluyendo las relaciones exteriores. Mientras que algunos políticos hablan de revisar el acuerdo actual, otros están en favor de un acuerdo completamente nuevo, basado en una asociación igualitaria. La independencia no está incluida en los términos de referencia de la Comisión sobre Autonomía, pero la visión de futuro -compartida por la mayoría de los groenlandeses- parece ser una Groenlandia en control de su propia economía y capaz de tratar con otras naciones según su propia discreción.

No se encontró petróleo en la primera perforación

El año 2000 también fue testigo de los resultados de la tan esperada perforación petrolera a 150 Km al oeste de Nuuk, en Fyllas Banke. La compañía petrolera noruega, Norsk Hydro, junto con otras compañías petroleras internacionales, obtuvo una concesión para perforar en busca de petróleo en la zona, geológicamente interesante, al oeste de Nuuk. Había grandes expectativas entre los groenlandeses de que encontrar petróleo sería una vía para forjar una mayor independencia económica de Dinamarca. El subsidio en bloque de Dinamarca suma el 54,5% de los ingresos del Gobierno Autónomo y el 38,7% del ingreso público total. Pero la primera exploración no tuvo como resultado petróleo fluyendo del subsuelo groenlandés. Sin embargo, las estadísticas muestran que la probabilidad de encontrar petróleo en la primera perforación es sumamente baja. Otro consuelo es que un país productor de petróleo como Noruega tuvo que realizar 13 perforaciones antes de encontrarlo. Naturalmente hubo decepción en Groenlandia pues las perspectivas de realizar otras perforaciones de prueba pueden ser afectadas negativamente. Todavía no se ha tomado ninguna decisión de perforar en otras áreas.

La perspectiva de encontrar petróleo en cantidades masivas también planteó el tema de las consecuencias económicas y sociales que tendría sobre el conjunto de la sociedad. Se han realizado cálculos y estudios a este respecto, los cuales muestran que la fuerza de trabajo de Groenlandia tendrá que ser educada en un nuevo campo para poder participar directamente en la aventura petrolera. La afluencia de trabajadores extranjeros puede alterar la trama social de las pequeñas comunidades groenlandesas y los nuevos sectores de servicio y las enormes inversiones en infraestructura para poder sustentar la industria petrolera también ejercerán una presión en el presupuesto del sector público. Tampoco es un tema menor el hecho que la demanda de viviendas en una ciudad como Nuuk –que ya tiene una considerable escasez en este campo- requerirá la importación de trabajadores y grandes inversiones que pueden conducir a una economía en espiral, ya que los mercados, relativamente pequeños de Groenlandia, se verán obligados a absorber las grandes cantidades de dinero que fluirán rápidamente para cumplir con las demandas de la industria petrolera.

SÁPMI - SUECIA

Convenio Nº 169 de la OIT

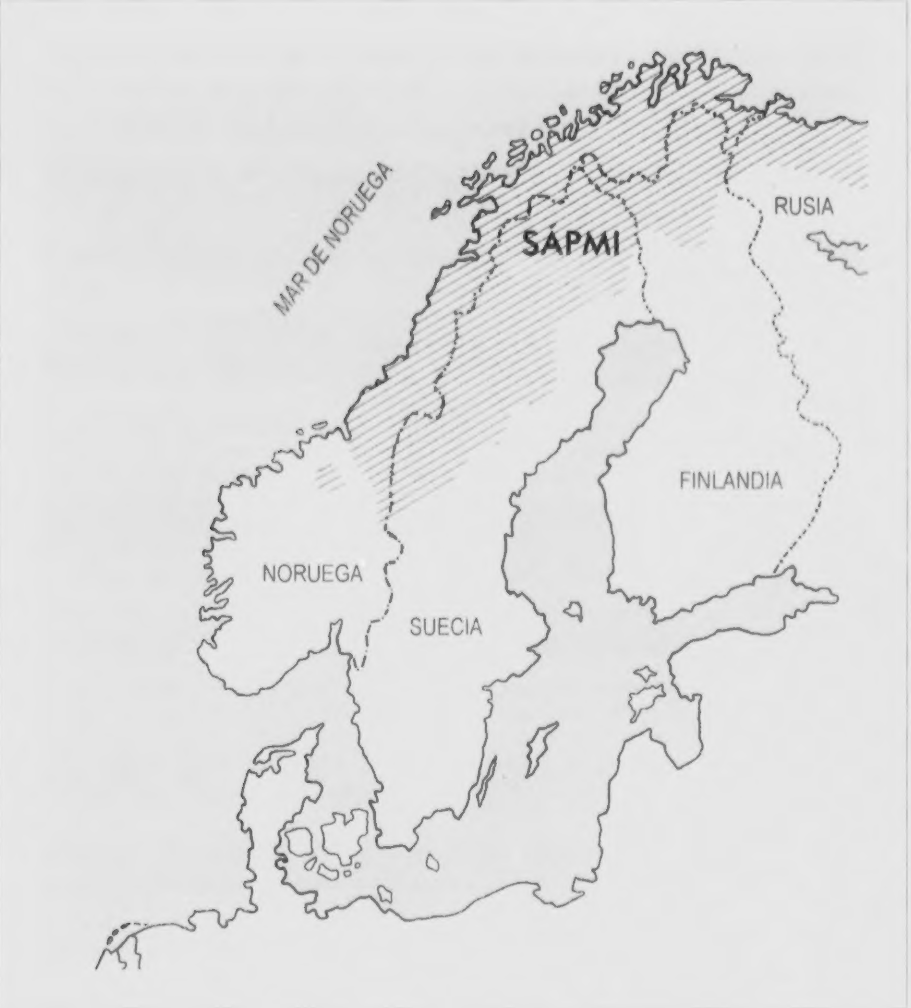
Suecia todavía no ha ratificado el Convenio Nº 169 de la OIT sobre Pueblos Indígenas y Tribales ("Convenio Nº 169 OIT")[1]. En 1999, un investigador nombrado por el gobierno para evaluar si Suecia debería ratificar el Convenio Nº 169 de la OIT (la "Investigación OIT")[2], recomendó que Suecia debería hacerlo. La recomendación fue reiterada en agosto del año 2000 por el Comité de la ONU sobre la Eliminación de la Discriminación Racial (CERD), en su presentación de las Observaciones Concluyentes sobre Suecia (las "Observaciones Concluyentes")[3]. El gobierno respondió lanzando otra investigación. Inicialmente se suponía que los resultados de esta investigación debían ser presentados en un escrito ante el parlamento sueco durante el otoño de 2000. La fecha ha sido postergada un par de veces. Según las últimas informaciones del gobierno, el escrito será presentado al parlamento en algún momento durante el otoño de 2001.

Derechos territoriales – generalidades

El principal obstáculo de Suecia para la ratificación del Convenio Nº 169 de la OIT es el Artículo 14, que establece que debe reconocerse la propiedad y posesión de las tierras que los pueblos indígenas han ocupado tradicionalmente. Como el gobierno dudó en ratificar el Convenio Nº 169 de la OIT, los derechos territoriales del pueblo *saami* se vieron aun más perjudicados durante el año 2000.

Cuando las autoridades suecas regulan, o tratan de cualquier otra manera el derecho del pueblo saami a la tierra, siempre han presupuesto que los saami no tienen derecho legal a la tierra que ocupan tradicionalmente.

Haciendo caso omiso a la incertidumbre sobre la propiedad, la compañía pública energética sueca, *Vattenfall*, solicitó el registro como propietaria de tres áreas separadas de tierra dentro del territorio tradicional saami. En los tres casos el *Sameby*[4], preocupado, ha objetado la solicitud, argumentando que Vattenfall no puede ser registrada como propietaria ya que, en primer lugar, no ha sido suficientemente demostrado que la tierra pertenece al Estado. Indudablemente, los Samebys se consideran los dueños de la tierra en disputa. En el primero de los tres casos, el juzgado de primera instancia decidió en favor del Sameby, estableciendo que no quedaba suficientemente claro que Vattenfall, alegando derivar su derecho del Estado, realmente poseía la tierra. La corte de apelaciones revirtió esto en una decisión del 22 de junio, 2000. El caso está actualmente pendiente en la Suprema Corte. Si la Suprema Corte estuviera de acuerdo con la corte de apelaciones, el Sameby



necesitará iniciar procedimientos judiciales en gran escala sobre la propiedad de la tierra en cuestión. Si no, Vattenfall será registrada como propietaria de una parte del área que el Sameby ocupa tradicionalmente.

Además, la privatización de bosques que previamente eran de dominio público y las compañías hidroeléctricas, menoscabaron aun más los derechos territoriales del pueblo saami durante el año 2000. La transferencia de tierras detentadas por esas entidades al sector privado, sin aclaración del estatus legal de la tierra, ha tenido como resultado que las compañías hidroeléctricas expandan aun más sus actividades en el bosque, en las áreas de pastoreo invernales y estivales de los saami.

Tal como lo señaló la Investigación OIT, no hay duda que la actitud sueca con respecto a los derechos territoriales del pueblo saami no es

BEST COPY AVAILABLE

compatible con el Convenio Nº 169 de la OIT. En sus Observaciones Concluyentes 2000, CERD expresó también preocupación sobre los derechos territoriales del pueblo saami, destacando particularmente las amenazas asociadas con la privatización de tierras en los territorios saami. CERD recomendó que Suecia promulgara una legislación que reconozca los derechos territoriales del pueblo saami. CERD conectó el derecho de este pueblo a la tierra con la posibilidad de que pueda continuar con su estilo tradicional de vida, demostrando un considerable conocimiento sobre el tema.

Derechos a la tierra y derechos culturales – áreas de pastoreo invernales

La cría de renos es uno de los principales medios de subsistencia tradicionales del pueblo saami. La mayoría de los saami estaría de acuerdo en que una industria viva de cría de renos es fundamental para la preserva de su cultura. Aunque no sean reconocidos como los propietarios de su tierra tradicional, los saami tienen permiso –según la legislación sueca- de ocuparse de la cría de renos en áreas que ellos han usado "desde tiempo inmemorial"[5]. Sin embargo, la legislación no define cuáles son estas áreas en opinión del gobierno. La incertidumbre ha resultado en conflictos, particularmente en las áreas de pastoreo invernales, que los saami hoy comparten en gran medida con la población no-saami. Existen actualmente siete casos pendientes en los tribunales suecos, en los cuales personas no-saami reclaman compensación de diferentes Samebys debido a que los renos pastorean en tierra sobre las cuales los no-saami tienen títulos de propiedad, pero que también, de acuerdo al Sameby, forma parte de sus áreas tradicionales de pastoreo invernal. Ambas partes solicitaron la intervención del gobierno y su asistencia para formular una solución aceptable para ambas partes. En otoño de 2000, en respuesta a las críticas de CERD en las Observaciones Concluyentes 2000, el ministro de agricultura prometió nombrar una comisión con la tarea de investigar qué áreas han usado los saami desde tiempos inmemoriales. No obstante, como la comisión será financiada por el presupuesto existente, todavía no ha sido constituida debido a la falta de fondos. Mientras tanto, durante el año 2000, un par de Samebys demandados anunciaron que ya no disponen de medios económicos para proseguir las demandas legales. Algunos otros Samebys están negociando con los terratenientes, tratando de llegar a un arreglo. Si no se llega a ningún acuerdo, se espera que la corte de apelaciones dicte sentencia sobre el primero de estos casos dentro del próximo par de meses.

Si tienen que pagar compensación por usar sus áreas de pastoreo invernales, sería el fin para muchas empresas criadoras de renos. La existencia de animales rapaces también añade presión sobre los criadores de reno.

Derechos culturales – animales rapaces

Los cuatro grandes animales depredadores[6], junto con el águila dorada, constituyen quizá la más severa amenaza para muchos criadores de renos. La cantidad de animales rapaces ha aumentado dramáticamente durante el par de años pasados en algunas partes de las áreas de cría de renos. Hay criadores que, en un año, han perdido hasta el 90% de sus terneros debido a los animales rapaces. La comunidad saami ha señalado repetidamente que no es factible para las alrededor de 1.000 empresas criadoras de renos sustentar los costos asociados con la preserva de los animales rapaces suecos. Los saami argumentan que deber haber un límite respecto a cuántos renos matados por animales rapaces debe asumir cada Sameby. Además, debe pagarse una compensación adecuada por cada reno muerto.

El 21 de diciembre, 2000, el gobierno presentó un proyecto de ley al parlamento, proponiendo una nueva política con respecto a los animales depredadores[7]. El proyecto no contiene ninguna limitación respecto a los costos de cuántos renos muertos tendría que asumir cada Sameby, y no propone plena compensación por la pérdida de renos. La substancial pérdida financiera causada por los animales rapaces tiene como resultado que muchos jóvenes saami duden actualmente en convertirse en criadores de renos.

Derechos territoriales – derechos a la caza y a la pesca

En las Observaciones Concluyentes 2000, CERD subrayó particularmente su preocupación sobre los derechos del pueblo saami a la caza y a la pesca.

Respondiendo a la crítica, el gobierno ha presentado el tema de los derechos del pueblo saami a la caza y a la pesca a una comisión cuya tarea es realizar una revisión general de tópicos relacionados con los saami en Suecia[8]. Sin embargo, la comisión anunció recientemente que cree que los derechos a la caza y a la pesca serían mejor investigados en forma separada por una comisión constituida para esa tarea en particular. Esto implica que pasará otro par de años antes de que se haga una adecuada evaluación de, quizá, la regulación más criticada en Suecia relativa al pueblo saami.

Derechos culturales- la Ley de la Lengua Saami

El 1 de abril del año 2000, entró en vigencia una nueva legislación que permite a los saami usar la lengua saami en los procedimientos legales y administrativos[9]. Encomendando al gobierno esta legislación en particular, en las Observaciones Concluyentes 2000, CERD exhortó a Suecia ampliar el ámbito de la ley para que cubra el territorio tradicional saami en su totalidad.

Notas

[1] Tampoco Finlandia y Rusia han ratificado el Convenio Nº 169 de la OIT, mientras que Dinamarca y Noruega sí lo han hecho.

[2] SOU 1999:25 – *Samerna ett ursprungsfolk i Sverige.*

[3] CERD/C57/CRP.3/Add. 2.

[4] Una entidad social colectiva y bien definida de individuos saami, aceptada como una entidad legal.

[5] En sueco "*urminnes hävd*".

[6] Los animales rapaces son: el lobo, el carcayú, el lince y el oso marrón.

[7] Prop. 2000/01:57 om en sammanhållen rovdjurspolitik.

[8] *Rennäringspolitiska kommitten.*

[9] Lag (1999:1175) om rätt att använda saamiska hos förvaltningsmyndigheter och domstolar.

SÁPMI - RUSIA

En Rusia existen dos organizaciones saami principales: la Organización de los Saami de Kola (AKS) y la Organización Pública Saami de la Región de Murmansk (OOSMO). La Conferencia Nórdica Saami (celebrada en septiembre del año 2000 en Kiruna) adoptó a OOSMO como nuevo miembro del Consejo Saami y OOSMO tiene ahora un escaño en ese Consejo. Se organizó un seminario sobre el uso de la tierra en la Península de Kola, con participantes de los saami escandinavos. El seminario exigió el respeto de la ley federal *"Sobre la garantía de los derechos de los pueblos indígenas"*. La cooperación entre Lovozero y Karasjok, Noruega, celebró su décimo aniversario. La organización religiosa noruega tiene una oficina permanente en Lovozero, con una persona que trabaja fundamentalmente con programas de asistencia humanitaria.

Algunos saami intentaron visitar sus antiguas aldeas natales (Varzino), que habían sido forzados a abandonar en los años 60, pero se les prohibió entrar al área porque ahora está siendo usada por el ejército. Las autoridades de Murmansk dieron 100.000 rublos para la publicación de libros de texto saami. No obstante, las transmisiones radiales en lengua saami fueron clausuradas debido a falta de dinero. La libertad de prensa está más amenazada ahora que durante los últimos años de la era soviética. Las autoridades utilizan métodos económicos para impedir que el periódico Lovozerskaya Pravda imprima artículos críticos sobre cualquier tópico, incluyendo la situación de los saami.

La situación del manejo de la cría de renos está ahora un poco mejor que antes. El director de la compañía de renos contrató a la OMON (policía

Los Juegos Nórdicos, Rusia. Saami preparándose para la carrera de renos. Foto: Leif Rantala

Chao Ke, Svein R. Nystö y Nina Afanasjeva, Utsjoki, Finlandia. Foto: Leif Rantala

BEST COPY AVAILABLE

especial) para luchar contra los cazadores furtivos. Estas medidas para salvar las manadas de renos han sido tomadas sobre la base de un decreto del gobernador del 12 de octubre de 1998. No obstante, los cazadores furtivos matan unos 6.000 renos (de los 100.000 existentes) cada año.

SÁPMI - FINLANDIA

El nuevo Parlamento Saami comenzó su trabajo el 1 de enero del año 2000, a continuación de las elecciones de otoño de 1999. Pekka Aikio fue reelecto presidente del Parlamento Saami. Al comienzo de la ceremonia, en abril, la presidenta de Finlandia, Sra. Tarja Holonen, subrayó en su discurso la importancia de encontrar una solución a la cuestión de los derechos territoriales en las áreas *saami* y declaró que tenía la esperanza de que los saami desarrollarían su autonomía cultural en cooperación con los organismos de toma de decisión finlandeses y las autoridades.

La disputa sobre la definición de quién es saami continuó durante todo el año. La relación entre los finlandeses y los saami siguió deteriorándose durante el año 2000. Esta situación comenzó hace 6 o 7 años, cuando un grupo de finlandeses alegaron de que ellos, en realidad, eran saami. Como no tuvieron éxito en que se escucharan sus alegatos y no pudieron obtener el derecho al voto en las elecciones al Parlamento Saami, fundaron un inteligente movimiento, declarando que los saami y los *lapones* (el antiguo nombre que se daba a los saami) eran dos grupos diferentes. El movimiento obtuvo un poderoso apoyo de parte de algunos diputados del Parlamento finlandés y de algunos periodistas finlandeses. Esta campaña de desinformación ha sido muy perjudicial para la población saami de Finlandia. En 1999, la suprema corte negó a unas 650 personas sus solicitudes de voto. Estas personas eran finlandeses que declararon ser saami.

Derechos territoriales

Un comité unipersonal, compuesto por el juez Pekka Vihervuori, se encargó de la tarea de investigar qué leyes de Finlandia deberían enmendarse para poder ratificar el Convenio 169 de la OIT. Los temas en cuestión son los derechos saami a la tierra, al agua, a los recursos naturales y a la subsistencia tradicional. Vihervuori sugirió el establecimiento de un consejo y un fondo de derechos territoriales para tratar los temas prácticos sobre derechos territoriales y decisiones referentes a la financiación. El estado finlandés debería pagar 15 millones de marcos finlandeses por año al fondo. Setenta y siete organismos y organizaciones respondieron a las sugerencias del Sr. Vihervuori.

Después del informe del comité Vihervuori, se nombró un nuevo comité, dirigido por la gobernadora de Lapland, la Sra. Pokka. Esta comisión continuará trabajando sobre el mismo problema de los derechos tradicionales que Vihervuori había comenzado a tratar. La mitad de los miembros de este comité han sido nombrados por el Parlamento Saami, la otra mitad por diversos organismos estatales y municipales. Su trabajo debería estar finalizado para noviembre del año 2001.

El tercer comité es, otra vez, un organismo unipersonal integrado por el juez Juhani Wirilander. Su tarea debería estar concluida para abril del año 2001.

El cuarto comité es una comisión nombrada por el mismo Parlamento Saami finlandés. También está investigando los temas referentes a la propiedad de la tierra. Su trabajo debería concluir para julio del año 2001.

En el año 2000, la investigadora Kaisa Korpijaakko-Labba publicó una extensa investigación sobre lo sucedido con los derechos territoriales saami con fecha anterior a 1750. El estudio cubre el período desde 1750 hasta 1917. En suma, los resultados muestran que la industria forestal trató sin miramientos a los derechos saami.

La Nueva Constitución de Finlandia

Finlandia obtuvo una nueva constitución el 1 de marzo del año 2000. En el capítulo *"El derecho a su propia lengua y cultura (§ 17)"* establece, *"los saami, como indígenas, y los gitanos y otros grupos minoritarios, tienen el derecho a mantener y desarrollar su lenguaje y cultura. El derecho de los saami a usar la lengua saami en sus contactos con las autoridades, es regulado por una ley especial"*. La constitución, y una corta explicación, fueron también publicadas en lengua saami.

LOS PUEBLOS INDIGENAS DE RUSIA

Cambios en la legislación nacional

En marzo del año 2000, se adoptó una ley del gobierno conforme con el Artículo 1 de la Ley Federal "Sobre Garantías de los Derechos de los Pequeños Pueblos de la Federación Rusa" (1999), para extender *"La Lista Unificada de Pequeños Pueblos de la Federación Rusa"* de 32 a 45 nombres, incluyendo así a 11 nuevos "pequeños pueblos indígenas del Norte", oficialmente reconocidos, y 3 pequeños pueblos del Cáucaso (debido al hecho de que las autoridades de la República de Dagestan se oponían a agregar a los pequeños pueblos indígenas *dagestani* a la nueva Lista, aunque los etnógrafos estimaban su número en unos 15).

La ley no fue apoyada por legislación que estableciera cómo lograr los derechos de esos pueblos, los cuales estaban incluidos en la Lista antes mencionada por primera vez desde su expulsión en 1926. Durante los años del poder soviético, la mayoría de los representantes de estos pueblos habían perdido la prueba documental que confirmaba su pertenencia a un pueblo específico, ya que la columna "Nacionalidad" del pasaporte podía ser solamente llenada con los nombres de nacionalidades incluidas en la Lista oficial de los Pueblos de la URSS. El mecanismo para restaurar en los documentos la pertenencia de una persona a uno de los pueblos recientemente incluidos en la Lista todavía no se ha publicado. El organismo responsable de la elaboración de este mecanismo es el Ministerio de Asuntos de la Federación, Política Nacional y Migración.

La Ley Federal *"Sobre Principios Generales para Organizar Comunidades de Pequeños Pueblos Indígenas del Norte, Siberia y el Lejano Oriente de la Federación Rusa"* fue aprobada el 20 de julio del año 2000, aplicándose solamente a los pueblos del Norte, Siberia y el Lejano Oriente. La Ley originó respuestas contradictorias de la Asociación de Pequeños Pueblos Indígenas (RAIPON).

El punto básico es que la mencionada Ley Federal, por un lado, restringe las actividades "empresariales" de las comunidades y, por otro lado, identifica de una forma muy difusa las funciones de las comunidades como agencias de autogobierno. Al mismo tiempo, durante el período de la formulación de esta legislación federal, que comenzó en 1992, fueron aprobadas leyes regionales sobre derechos comunitarios en aproximadamente un tercio de la cantidad total de las regiones del Norte. En algunas regiones, las Asociaciones de Pueblos Indígenas han logrado obtener más derechos comunitarios que aquellos garantizados por la Ley Federal. La Constitución de la Federación Rusa estipula un ajuste de la legislación regional con respecto a la Federal. Esto podría amenazar a los pueblos indígenas en regiones con legislación más democrática relativa a los derechos de los pueblos indígenas, perdiendo algunos de los derechos recientemente adquiridos como resultado de los procedimientos de ajuste. Sin embargo, estas regiones son pocas, principalmente la de Khabarovsk Kray y el Okrug Autónomo Koryak. Al mismo tiempo, hay más de dos docenas de regiones en donde las autoridades nunca se molestaron en promulgar ninguna legislación regional sobre los derechos de los pueblos indígenas antes de que las Leyes Federales entraran en vigencia; sólo reflejaron la existencia de pueblos indígenas y sus derechos en declaraciones grandilocuentes en las "Cartas" regionales o en el estatus temporario de los pueblos indígenas de sus regiones.

Desde 1992, la Duma Estatal ha estado en proceso de elaboración de una Ley Federal sobre "Territorios de Uso Tradicional Natural". Fue adoptada "en primera lectura" en 1998 y su nueva versión está siendo preparada ahora para ser considerada. Su adopción puede conducir a consecuencias similares, implicando una división de la unidad del movimiento de los pueblos indígenas. Para evitar esto, la Asociación Rusa de Pueblos Indígenas del Norte y miembros del grupo nacional de IWGIA están monitoreando constantemente los esfuerzos para redactar la Ley, haciendo sugerencias a través de sus Diputados, publicando materiales correspondientes en su Revista y tratando de brindar apoyo legal a las organizaciones regionales de pueblos indígenas en lo relativo a la protección de sus derechos.

El gobierno y los pueblos indígenas: cambio en la estructura del poder ejecutivo

En mayo del año 2000 fue desarticulado por una ordenanza Presidencial el Comité Estatal para el Norte, que acostumbraba acumular y canalizar fondos presupuestarios hacia las regiones para ser compartidos entre programas de apoyo para pueblos indígenas del Norte, Siberia y el Lejano Oriente. A pesar del hecho de que sus esfuerzos fueron básicamente inefectivos y que, durante la década pasada, no se cumplieron dos programas estatales quinquenales relativos al desarrollo económico y social de los pequeños pueblos indígenas del Norte, esta agencia tenía, sin embargo, un departamento disponible al cual los representantes indígenas del Norte podían acudir. Los más persistentes de ellos tenían una oportunidad de lograr al menos un apoyo parcial para sus proyectos regionales. Ahora, las funciones y los fondos presupuestarios del Comité Estatal para el Norte han sido desviados a dos Ministerios reorganizados: el Ministerio de Economía de la Federación Rusa y el Ministerio para los Asuntos de la Federación y la Politica Nacional y Migratoria. Hasta la fecha, ambos Ministerios han sido incapaces de organizar estructuras especiales para sus tratativas con los pequeños pueblos del Norte. Los problemas que enfrentan los pequeños pueblos están absorbidos por la vastedad de los asuntos de interés de estos Ministerios. Basta decirz que el Ministerio para los Asuntos de la Federación, Política Nacional y Migratoria, esta bajo constante crítica por su incapacidad de encarar las actividades migratorias en Chechnya, mientras que el Ministerio de Economía es criticado por su impotencia para detener la crisis económica y energética del Lejano Oriente. La reunión de representantes de autoridades celebrada en Moscú, del 27 al 28 de noviembre del año 2000, para investigar los problemas de los pueblos indígenas del Norte hizo énfasis en que la situación de los pueblos indígenas era un asunto de grave preocupación. Vale la pena notar que los voceros gubernamentales entremezclaron en sus informes cifras del año anterior e incluso indicadores demográficos y sociales aun más antiguos referentes al nivel de vida.

Condiciones de vida de los pueblos indígenas de Rusia

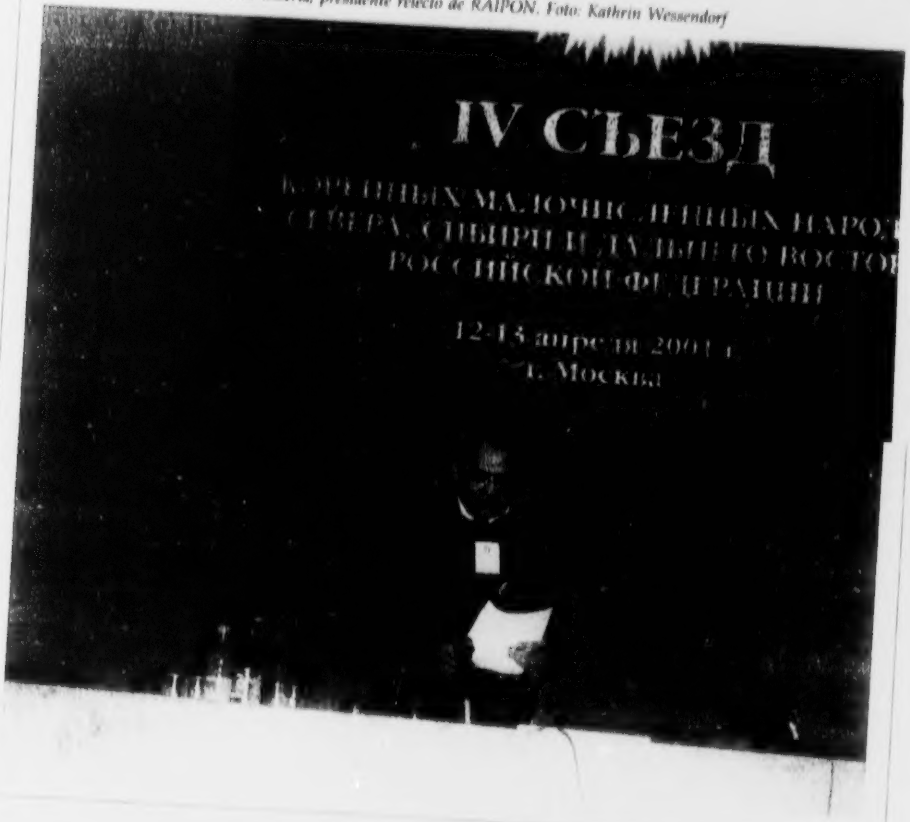
Según el Vicepresidente de RAIPO, Dra. Larissa Abryutina, la principal razón de la crisis de la situación de los pueblos indígenas es la herencia abrumadora de una política paternalista del pasado, así como la remoción de niños de sus familias para ser educados en escuelas de internado, transformando a los indígenas en personalidades indefensas. Estas circunstancias tuvieron como resultado actividades físicas y emocionales deficitarias, que se convirtieron en el requisito previo para el deterioro de su salud. El aumento de casos de tuberculosis esta probado estadísticamente. La mortalidad debida a esta enfermedad es tan elevada que alcanza a 40 casos cada 100 personas en la región autónoma de Khanty-Mansiisky; en la región Yamal-Nenets aumenta a 87 (en Rusia el promedio es de 10). Los altos índices de suicidio en el Norte está principalmente relacionados con la adicción alcohólica de algunos indígenas. En Chukotka, la mortalidad indígena debido al suicidio alcanza un promedio del 83,3 por 100.000 (en Rusia este promedio es de 30 por cada 100.000).

El promedio de expectativa de vida de los indígenas del Norte es de 10 a 15 años menos que en el resto de Rusia. En algunas regiones es tan baja como de 41 a 42 años para los hombres. En la mayoría de las áreas de Rusia, el aumento de la población es negativo y está cayendo. Por ejemplo, durante la última década los *itelmen* de Kamchatka tuvieron un promedio negativo de aumento de población -menos 2,1 por mil. Según cifras del Instituto de los Pueblos Indígenas del Norte (la Rama Siberiana de la Academia Rusa de Ciencias), en 1998 el índice de mortalidad de los *saami, nganasan, negidal, aleut, enets, esquimales, kumandins* y *shor* era más elevado que su tasa de natalidad.

En comparación con los años 1990, el índice de natalidad entre los pueblos indígenas del Norte ha disminuido en un 34%, mientras que el índice de mortalidad ha aumentado en un 42%. El aumento natural de la población de los pueblos indígenas del Norte ha disminuido 3 veces en ese período.

Dos participantes (saami y nenets) en el IV Congreso, Rusia, abril de 2001. Foto: Kathrin Wessendorf

Sergey Haruchi, un nenets de Siberia, presidente relecto de RAIPON. Foto: Kathrin Wessendorf


IV СЪЕЗД
КОРЕННЫХ МАЛОЧИСЛЕННЫХ НАРО
СЕВЕРА, СИБИРИ И ДАЛЬНЕГО ВОСТО
РОССИЙСКОЙ ФЕДЕРАЦИИ
12-13 апреля 2001 г
г. Москва

BEST COPY AVAILABLE

En el mismo período, la cantidad de personas empleadas entre los pueblos indígenas del Norte decreció en la agricultura en un 45%, en la industria en un 43%, en la construcción en un 68% y, en el comercio, comunicación y transporte en un 32%. La actividad de estas personas sigue disminuyendo en las economías tradicionales y el nivel de desempleo en una serie de poblados indígenas excede el 60%. Por ejemplo, en la región autónoma de Koryak, en las pequeñas aldeas donde viven predominantemente los *koryak*, el desempleo excede al 85%. Este hecho, junto con el estado crítico de la salud y la reproducción de los pueblos indígenas, está conectado con la crisis general social y económica del país y con la degradación del medio ambiente natural, provocada por la explotación incontrolada de los recursos naturales.

Violaciones y amenazas de violación de los derechos de los pueblos indígenas

En el terreno de la protección del medio ambiente, se puede observar un aumento de la producción petrolera en las áreas de subsistencia de los pueblos indígenas, generalmente sin su consentimiento o cualquier tipo de examen ecológico y sin pago compensatorio por daños. Las áreas fuera de las costas de Sakhalin, el Norte de Siberia Occidental y el suelo subyacente de los depósitos sedimentarios de las bahías de Taz y Ob están particularmente amenazados por estos emprendimientos económicos. La extracción de minerales, por otro lado, afecta las áreas de Yakutia, Evenkia, Kamchatka y Chukotka. En los Territorios de Karelia, Primorskiy y Khabarovsk puede detectarse el intenso talado de arboles por parte de compañías madereras, y en muchas regiones hay una contaminación ambiental general causada por los desechos industriales y radioactivos.

En el área de los derechos a la tierra, educación y cuidado de la salud, en algunas regiones ha comenzado una campaña para volverse a apoderar de tierra otorgada a los pueblos indígenas hace tanto tiempo como en 1992. La cantidad de escuelas y maestros en las áreas pobladas por pueblos indígenas ha decrecido constantemente desde 1995, junto con una carencia de libros de texto, especialmente aquellos necesarios para enseñar en lenguas nativas. La reducción de la cantidad de hospitales aldeanos y de personal médico calificado, de acuerdo con el llamado plan para el "aumento de los hospitales aldeanos", que en realidad significa una reducción en número (el Gobierno esta llevando a cabo una política de consolidación de las instituciones médicas en unidades mayores), ha sido un hecho incontrovertible desde 1995 en las áreas pobladas por pueblos indígenas. También se siente constantemente la carencia de productos alimenticios.

Conclusión

En el albor de un nuevo siglo, la situación socioeconómica y legal de los pueblos indígenas sigue siendo sumamente complicada. La situación de los grupos locales que residen en territorios de asentamientos tradicionales y dependen del uso tradicional de la naturaleza es considerada -incluso por los representantes de las autoridades- como desastrosa. Al mismo tiempo, no existe ningún departamento especializado en Rusia que se encargue de los problemas de los pueblos indígenas, no existe ninguna agencia estatal responsable de esta desesperada situación. La tarea de mejorar la situación socioeconómica de estos pueblos no es considerada de importancia por las autoridades. El problema que enfrentan los pueblos indígenas por no ser capaces de ejercer sus derechos a la tierra no se resuelve porque está estrechamente relacionado con una solución del problema general del estado relativo a los derechos a la tierra y a los recursos naturales.

Bajo tales condiciones, las actividades relacionadas con los intereses por los derechos humanos y orientadas a la información y los esfuerzos prácticos de parte de las organizaciones públicas de los pueblos indígenas han evolucionado lentamente. El reciente aumento de la actividad de RAIPON, que abarca a 34 organizaciones regionales y étnicas de pueblos indígenas de Rusia ha sido verdaderamente impresionante. La expansión de sus actividades, la consolidación de la comunicación informativa con las comunidades regionales, la publicación de su propia revista, su posición activa en relación al Estado y las autoridades regionales, su participación en foros internacionales de pueblos indígenas y su creciente reputación internacional, han sido obtenidas mediante las múltiples actividades organizadas por la actual dirección de RAIPON, electas en 1997 y reelectas en 2001, y a través del apoyo de los proyectos de RAIPON por parte de las organizaciones internacionales.

NUNAVUT

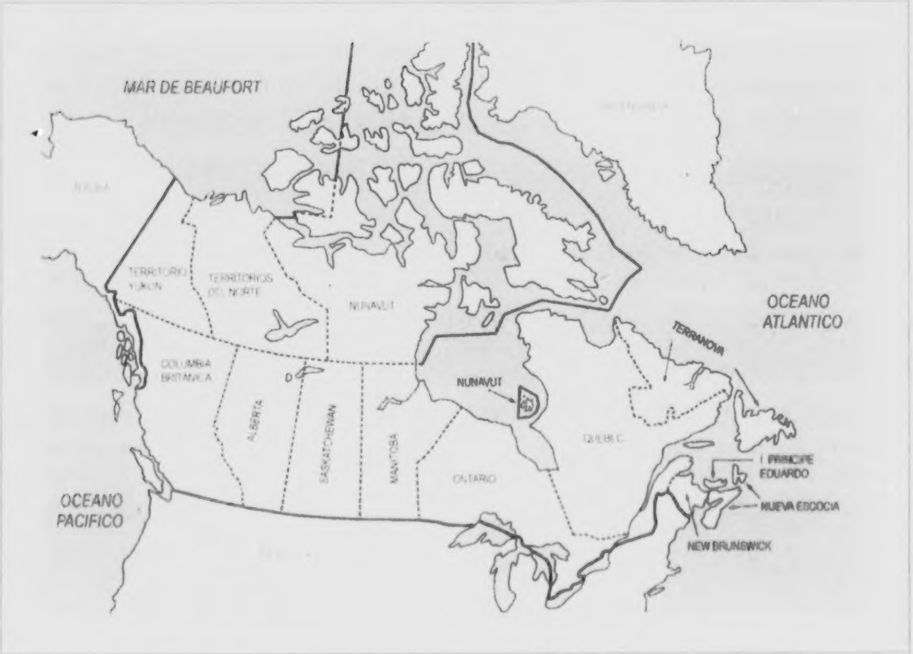
El año 2000 no sólo fue el comienzo de un nuevo milenio sino también el inicio de un enorme y arduo trabajo de parte del nuevo gobierno autónomo de Nunavut para tratar de mejorar las condiciones de las compañías de propiedad inuit y preparar y capacitar al personal gubernamental para la descentralización de diversas juntas y departamentos del gobierno, que supuestamente se deberían trasladar a algunas de las comunidades importantes de Nunavut para crear fuentes de trabajo y desarrollo local. Sin embargo, uno de los más importantes debates en Nunavut durante el año 2000 fue la creación de una nueva política indígena basada en el término *Inuit Qaujimajatuqangit*, cotidianamente referido como IQ, que significa "lo que es sabido desde hace largo tiempo por los inuit", en la lengua local *inuktitut*. En inglés, IQ se refiere al conocimiento tradicional inuit. El término *Inuit Qaujimajatuqangit* es definido como los valores, concepciones del mundo, lengua, organización social, conocimiento, habilidades de la vida, percepciones, etc., de los inuit, que han sido transmitidos oralmente de una generación a otra.

Principios directivos para el Gobierno de Nunavut

La visión del Gobierno de Nunavut es que el IQ debería ser integrado en todas las políticas y programas del gobierno. Se han realizado varias audiencias y talleres en Nunavut durante los pasados 2-3 años para tratar de formular el IQ en un marco funcional para los políticos de esta región. En 1999 el Departamento de Desarrollo Sustentable de Nunavut definió seis principios guías para el desarrollo de la política y el programa del Gobierno de Nunavut fundamentados en el modelo tradicional de sociedad, basándose en el conocimiento, las experiencias y pericia de los ancianos, que han guiado y gobernado tradicionalmente la sociedad inuit: 1) *Pitijitsirniq*: el concepto de servir, que establece las relaciones entre el gobierno y el pueblo al cual sirve, 2) *Aajiiqatigiingniq*: alcanzar una resolución mediante la toma de decisión a través de la discusión/consenso, 3) *Pilimmaksarniq*: adquisición de habilidades y conocimiento mediante la observación y la experiencia, 4) *Piliriqatigiingniq*: trabajar conjuntamente para el logro de un propósito común, 5) *Avatimik Kammattiarniq*: cuidado y manejo del medio ambiente, 6) *Qanuqtuurunnarniq*: ser ingenioso para resolver problemas mostrando respeto, tolerancia mutua y con el medio ambiente. La parte difícil, por supuesto, es integrar estos principios a una estructura moderna de gobierno. Sin embargo, el Informe Inuit Qaujimajatuqangit del Gobierno de Nunavut, que fue hecho público en agosto del año 2000, tiene algunas recomendaciones muy concretas.

Recomendaciones concretas

La importancia general de la implementación del IQ es aplicar el inuktitut como lengua de trabajo del gobierno. Sin la lengua inuktitut, el conocimiento tradicional inuit no puede prosperar. El informe establece que el gobierno debería elaborar lecciones obligatorias del idioma para el personal no-inuit y que el gobierno debería suministrar intérpretes para que el personal inuit no se vea forzado a hablar en inglés durante las reuniones internas.


MAR DE BEAUFORT
ALASKA
TERRITORIO YUKON
TERRITORIOS DEL NORTE
NUNAVUT
COLUMBIA BRITANICA
D
ALBERTA
SASKATCHEWAN
MANITOBA
ONTARIO
NUNAVUT
QUEBEC
TERRANOVA
OCEANO ATLANTICO
I. PRINCIPE EDUARDO
NUEVA ESCOCIA
NEW BRUNSWICK
OCEANO PACIFICO

Para aumentar el conocimiento de los valores y concepciones tradicionales de vida, cada departamento del gobierno debería invitar a ancianos a fin de que realizaran sesiones de orientación para el personal no-inuit y también deberían ser consultados en todas las sesiones sobre política, planificación estratégica, planificación comercial y desarrollo, para asegurar que la tradición y las creencias inuit sean respetadas durante la implementación de los programas y políticas. En el futuro, se deberían realizar en Nunavut mayores esfuerzos para investigar y registrar tópicos referentes al Inuit Qaujimajatuqangit para su publicación y divulgación masiva, para ser usados en la elaboración de materiales de enseñanza en inuktitut y para incrementar la autoconciencia inuit.

Otro tema importante sugerido es hacer que las horas laborables del gobierno sean más acordes con los estilos de vida inuit. Los empleados del gobierno deberían poder obtener una "licencia tradicional" en ciertos momentos del año para cazar caribú, gansos, ballenas, recoger almejas y recolectar moras. El informe establece finalmente que debería establecerse un comité gubernamental de monitoreo del Inuit Qaujimajatuqangit para examinar el trabajo realizado por las agencias que suministran servicios a los inuit. Este equipo de tareas fue establecido a comienzos del año 2001 y tiene que supervisar el trabajo del gabinete, la asamblea legislativa, la policía y el Departamento de Justicia de Nunavut (Nunatsiaq News, 2001).

BEST COPY AVAILABLE

Temas relativos a la mujer en Nunavut

La violencia familiar ha escalado durante los últimos años en Nunavut. El Consejo sobre la Situación de la Mujer, "*Quilliit*", y el Consejo de Desarrollo Social de Nunavut (NSCC) recomendaron que el gobierno de Nunavut adopte una política nacional canadiense de "tolerancia cero" con respecto a la violencia contra las mujeres y niños. El Consejo de Desarrollo Social de Nunavut sugiere que se adopte una "estrategia de bienestar comunitario", lo cual significa enfrentar la violencia a través de programas para aquellos que golpean, asesoramiento para hombres y mujeres y participación de la comunidad en forma amplia. En una entrevista, la presidenta del Consejo sobre la Situación de la Mujer expresó que está de acuerdo con el enfoque comunitario pero ella cree que también se necesita establecer medidas caucionarias. En las comunidades, algunos ancianos quieren encarar la violencia doméstica a través del Inuit Qaujimajatuqangit, pero las cosas no son como eran antes, especialmente debido a la violencia relacionada con el alcohol y las drogas, que predomina en Nunavut (Nunatsiaq News: 2000, oct. 13). Este puede ser un problema potencial para las mujeres inuit con respecto a la política IQ.

Referencias

Department of Sustainable Development (1999): Inuit Qaujimajatuqangit Framework. Iqaluit.

Arnakak Jaypetee (2000): *"What is Inuit Qaujimajatuqangit?"* Nunatsiaq News, 25 de agosto.

Nunatsiaq News (2000): *"GN urged to adopt 'zero tolerance' resolution on family violence"*. 13 de octubre.

Nunatsiaq News (2001): *"Nunavut's Inuit Qaujimajatuqangit group gets started"*, 2 de febrero.

Report from the September Inuit Qaujimajatuqangit Workshop (2000) Niaqunngnut, Nunavut, 29/30 de septiembre, Nunatsiaq News Iqaluit.

NUNAVIK

La Comisión de Nunavik, cuyo mandato es proponer una forma de autonomía para el territorio ártico de la Provincia de Quebec (Canadá), debe hacer público su informe en abril del año 2001, después de poco menos de un año y medio de trabajo.

Nunavik, un vasto territorio de 500.000 kilómetros cuadrados que representa un tercio del área de la Provincia de Quebec, está habitado por unas

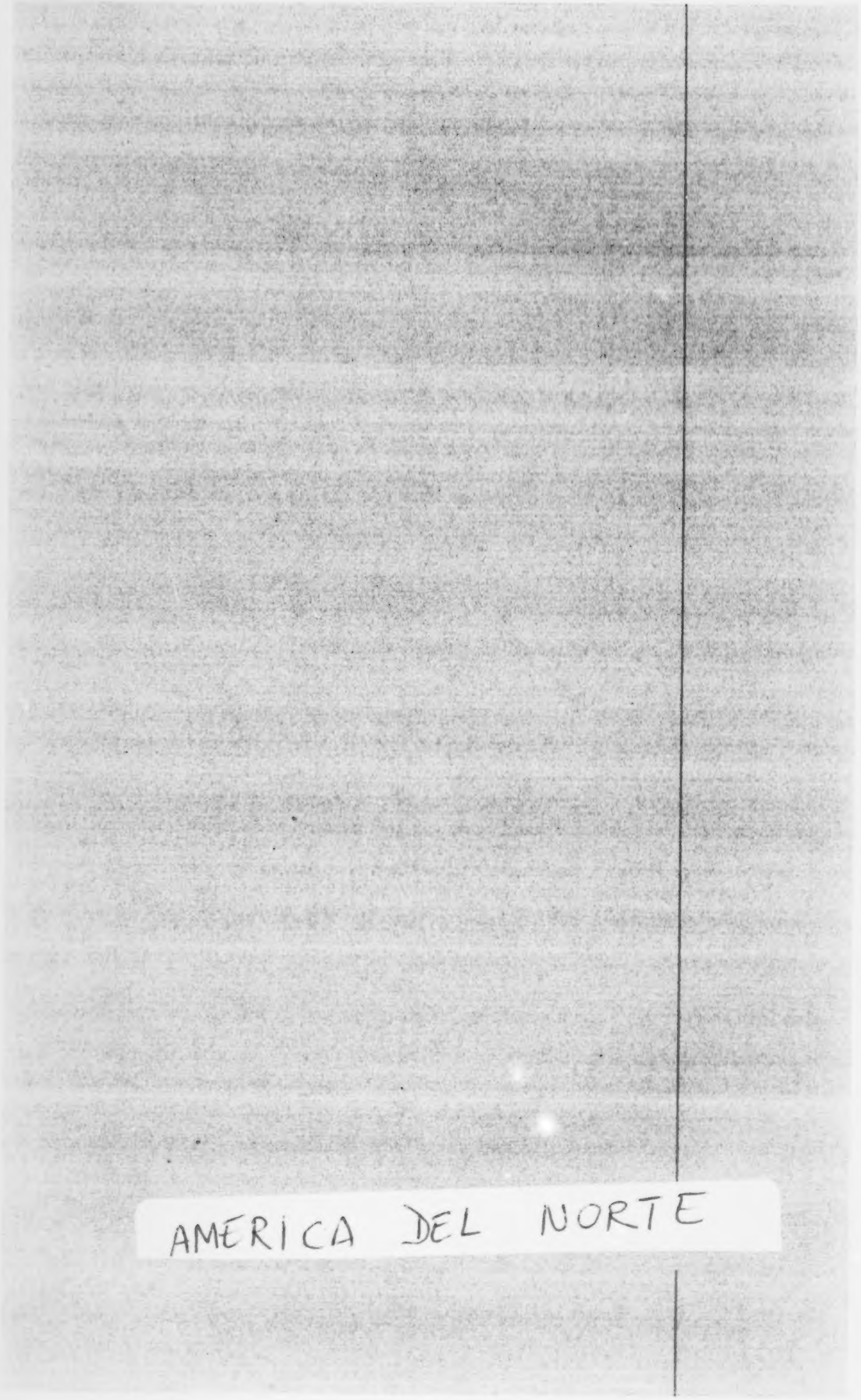
10.000 personas. La población está dividida en 14 aldeas costeras. Alrededor del 90% de la población es *inuit*. El territorio tiene un fuerte potencial de desarrollo económico pues contiene importantes recursos minerales y fauníferos. Estos recursos son todavía explotados por la población inuit, principalmente como importantes recursos alimenticios.

La Comisión de Nunavik fue creada en 1999 por un acuerdo político entre los gobiernos de Canadá, Quebec y los inuit de Nunavik, representados por la Corporación Makivik. La Comisión está compuesta de 3 miembros nombrados por el gobierno de Quebec, 3 miembros nombrados por los inuit y 2 miembros por el gobierno de Canadá. Está encabezada por dos comisionados, uno nombrado por los inuit y el otro por el gobierno de Quebec, quienes actúan como copresidentes de la Comisión.

Su mandato es proponer un conjunto comprehensivo de recomendaciones sobre el diseño, operación e implementación de una forma de gobierno para Nunavik, más específicamente sobre los poderes de dicho gobierno, el proceso electoral, la selección de dirigentes y miembros ejecutivos, relaciones con otros gobiernos, medidas financieras para promover y destacar la cultura inuit, incluyendo el uso del *inuktitut* en el Gobierno de Nunavik y medidas de transición.

Para alcanzar sus objetivos, la Comisión de Nunavik realizó una amplia consulta. Visitó todas las aldeas de Nunavik y celebró audiencias públicas, reuniones con consejos municipales, con estudiantes secundarios y con organizaciones locales y regionales. Examinó informes presentados por las organizaciones actualmente involucradas en servicios públicos en Nunavik y consultó a departamentos de los gobiernos de Quebec y Canadá. Además, la Comisión celebró consultas con las organizaciones aborígenes vecinas que tienen algún interés en Nunavik, como los *cree*, los *naskapi* y los *innu*.

La Comisión de Nunavik no es el primer paso que se da en dirección a la implementación de la autonomía en Nunavik. En realidad, durante los últimos 30 años, los inuit de Nunavik han reiterado su voluntad de establecer una forma apropiada de autonomía. El Acuerdo de James Bay y Norte de Quebec les otorgó una forma de autonomía administrativa y algunos poderes extendidos en ámbitos específicos como la educación. No obstante, las discusiones relativas al tema nunca se detuvieron realmente; los inuit han tratado de lograr un consenso entre ellos mismos con respecto al tipo de gobierno que desean establecer. La Comisión de Nunavik marca entonces un paso decisivo en este proceso histórico. Las recomendaciones que provengan de la Comisión deberían ser usadas, por cierto, como una base sobre la cual comenzar las negociaciones entre las tres partes.


AMERICA DEL NORTE

BEST COPY AVAILABLE

AMERICA DEL NORTE

CANADA - I

Relaciones de las Primeras Naciones de Canadá al final del segundo milenio

Cualquier intento de seleccionar y analizar dos o tres temas claves para el año 2000 requiere tomar un riesgo. El año 2000 fue el año final de un milenio en el cual la segunda mitad comenzó con un debate sobre si "los indios tienen alma". En Canadá, el milenio culminó con una Comisión Real sobre Pueblos Aborígenes, que dedicó un capitulo entero a la necesidad de una nueva investigación sobre los efectos de los internados indígenas - incluyendo un índice de mortalidad del 50% alcanzado por algunas de esas instituciones. Así que debemos comenzar con un recordatorio de que la mayor parte de las relaciones de las Primeras Naciones continuaron de la misma forma en que lo han hecho desde la Confederación, a pesar de que hayan sido creados nuevos ámbitos aquí y allá.

El "aquí y allá", donde no se han creado nuevos ámbitos pueden ser identificados por tres eventos centrales: (1) la ratificación del Acuerdo Final Nisga'a por la Asamblea Legislativa de Columbia Británica y el Parlamento canadiense: (2) el primer año completo del nuevo territorio de Nunavut, en el cual una mayoría *inuit* tiene el poder en este momento (ver también el artículo sobre Nunavut); y (3) las consecuencias de las dos decisiones Marshall de la Suprema Corte, aceptando la primera por la cual, según el Tratado de 1760-61, la nación *mi'kmaq* tiene un derecho pesquero continuo que, según la Corte, permite a los miembros de esa nación obtener "una moderada subsistencia" y la segunda que da marcha atrás sobre esa decisión al poner énfasis en el derecho del gobierno federal a hacer reglamentaciones pesqueras.

La "misma vieja cosa, la misma vieja cosa" a la que se recurre en demasiadas situaciones como para mencionarlas. Analizaré sólo lo más evidente: (1) las conclusiones publicadas en la edición de octubre de 2000 del *Canadian Medical Association Journal*, expresando que los hijos de padres aborígenes en una ciudad canadiense constituían una predicción clave de la pobreza infantil urbana; (2) el continuo alto nivel de encarcelamiento de personas de las Primeras Naciones, mayormente por crímenes resultantes del empobrecimiento material, combinado con cuatro generaciones de niños escolares que se criaron en internados; (3) la caracterización del tratado *nisga'a* por la Oposición Oficial del Parlamento Federal y de la Legislatura de Columbia Británica, como "basado en la raza", en una actitud de derecha para negar la realidad de la identidad nacional y cultural de las Primeras

BEST COPY AVAILABLE

GROENLANDIA
CANADA
ESTADOS UNIDOS
OCEANO PACIFICO
OCEANO ATLANTICO
MEXICO

Naciones en general o de los nisga'a en particular, y (4) la continua negativa del Ministro de Asuntos Indios y Desarrollo del Norte, Robert Nault, -con la retórica de sus predecesores- de que su departamento tenga responsabilidad sobre las personas integrantes de las Primeras Naciones que viven fuera de áreas de reserva (como lo hace más de la mitad de la población de las Primeras Naciones) a pesar de la sección 92(24) de la Ley Constitucional de 1867, que estipula que el Parlamento Federal tiene jurisdicción tanto sobre los "Indios como las tierras reservadas para los Indios".

La significación de la ratificación parlamentaria de un tratado moderno no debería ser subestimada. Ni tampoco la decisión de la Suprema Corte que adjunta incluso un peso modesto a un tratado firmado mucho antes de la Federación Canadiense o del advenimiento de un territorio de mayoría inuit.

BEST COPY AVAILABLE

El Tratado Nisga'a

Los nisga'a comenzaron a solicitar reconocimiento de su título aborigen sobre el Valle del Río Nass, en Columbia Británica, hace más de un siglo. Sus proponentes dicen que el tratado permite una medida importante de autonomía a pesar de serias constricciones, p. ej., dependencia de la financiación federal y el requisito de respetar normas provinciales con respecto a los temas de educación y salud.

La disposición del Gobierno Liberal de Ottawa y del Nuevo Gobierno Democrático de Victoria a presionar sobre la ratificación del tratado a pesar de una considerable oposición parlamentaria, testifica los genuinos esfuerzos para otorgar algún respeto a las repetidas admoniciones de la Suprema Corte relativas a la vigencia permanente de los derechos aborígenes. Los mensajes de las listas de varios sitios web y e-mail de las Primeras Naciones muestran tanta oposición al tratado en el seno de las Primeras Naciones como en la oposición parlamentaria, pero por razones bastante opuestas a las de aquella: las previsiones sobre autogobierno no otorgan una genuina autonomía y el título de la tierra de los nisga'a, según el tratado, cubre una pequeña porción de sus tierras tradicionales bajo términos dudosos. Las Primeras Naciones adyacentes a los nisga'a dijeron que el tratado nisga'a perjudicaba sus perspectivas de lograr un arreglo comparable. Los senadores de derecha tomaron este alegato como una excusa más para oponerse a la ratificación.

Los mi'kmaq y los derechos pesqueros

La decisión en el caso *Donald Marshall Jr.* es sumamente compleja. Marshall, quien había servido previamente 11 años una condena errónea por asesinato, fue procesado por capturar anguilas fuera de estación. En base a una garantía (de un tratado de 1761) de una "casa rodante" en la cual los mi'kmaq y *maliseet* podían vender sus productos de la caza y de la pesca, la Suprema Corte decidió que los mi'kmaq tenían un derecho permanente a pescar para obtener una subsistencia moderada. Como resultado de las decisiones de la Suprema Corte en el otoño de 1999, los pescadores de la costa de Nueva Brunswick y Nueva Escocia atacaron a botes pesqueros mi'kmaq y trampas de langostas mientras que el RCMP proveyó poca o ninguna protección. En una actitud casi sin precedentes, la Suprema Corte respondió a una solicitud de aclaraciones del Fiscal del Estado de Nueva Brunswick y de la Coalición de Pescadores de Nueva Escocia Occidental. Aunque la decisión increpó al gobierno y a los oponentes de los derechos de tratados y rechazó su petición, pidiendo a la Corte reconsiderar su sentencia previa, la Corte, no obstante, respondió en una decisión conocida como *Marshall 2.* También hizo énfasis en la autoridad del gobierno para regular el ejercicio de estos derechos. Durante la última estación de la langosta, en otoño de 2000, el Gobierno intentó imponer severos límites a la pesca mi'kmaq, aunque ofreció subsidiar el costo del equipo de aquellos pescadores mi'kmaq que se sometieran a su autoridad. Esto pareció tener más que ver con las estrategias históricas de "dividir para reinar" del colonialismo que con el enfoque de afirmación de los tratados de la Suprema Corte.

En otro enfoque del tema de los derechos pesqueros de los mi'kmaq, el Jefe Nacional de la Asamblea de las Primeras Naciones, Matthew Coon Come, preguntó si algunas otras personas de Canadá estaban restringidas por la corte a "una moderada subsistencia". A fines de año, había varios casos legales pendientes: cargos pesqueros federales contra los pescadores mi'kmaq; demandas mi'kmaq contra el RCMP y el Departamento de Pesca; y demandas mi'kmaq contra la provincia (y viceversa) relativas a la aplicación del mismo tratado a otros recursos naturales como la caza y la madera.

Pretensiones políticas del Gobierno vs. intentos de la Suprema Corte para extender el Imperio de la Ley a las Primeras Naciones: dos enfoques diferentes

Más de la mitad de la población indígena de Canadá vive en áreas urbanas. Los indígenas urbanos están materialmente más empobrecidos que sus parientes que viven en reservas: carecen de perspectivas de suplir su subsistencia con pesca y caza de subsistencia. Muchos se trasladan entre la reserva y la ciudad en forma frecuente. Aquellos que pasan más de seis meses fuera de la reserva pierden los beneficios federales, incluyendo no sólo el cuidado de la salud suplementario sino también la enseñanza superior, posterior a la secundaria.

Observadores de las relaciones de las Primeras Naciones de Canadá han destacado hace algún tiempo que las decisiones de la Suprema Corte son mucho más adelantadas que la conducta del Gobierno y, además, que el Gobierno no es particularmente cumplidor de las instrucciones y órdenes de la Corte. Mi propia sutileza en este punto de vista es que el Gobierno trata continuamente de encontrar una posición intermedia entre las decisiones de la Suprema Corte –que considera las garantías de los derechos aborígenes y de los tratados en la Constitución como una promesa sagrada- y la posición de la Oposición Oficial, el Partido Conservador de la Alianza Reformista Canadiense – que aboliría las garantías constitucionales, los derechos aborígenes y los tratados así como disolvería cualquier protección para los pueblos indígenas. El continuo esfuerzo liberal para encontrar un camino intermedio se remonta a la era del Primer Ministro Mackenzie King, en los años 30 y 40. Es famoso lo que se dijo de Mackenzie King: que nunca haría por mitades lo que se puede hacer por cuartos.

Esta es una estrategia que funcionó mucho mejor en una era de represión que en una era con pretensiones de reconciliación. No es una estrategia calculada para que alcance a las áreas remotas de Canadá, donde algunas personas siguen con sus actividades tradicionales, algunos jóvenes inhalan gasolina y muchos niños se van a dormir con hambre.

CANADA - II

La Ley de Gobierno de las Primeras Naciones y la Ley de Instituciones Financieras de las Primeras Naciones

El 17 de abril de 2001 marca, en Canadá, el 19º Aniversario de la adopción de la Ley Constitucional de 1982. La sección 35 de la constitución canadiense reconoce y afirma *"la existencia de los aborígenes y*[de los] *tratados de derechos de los pueblos aborígenes"*.

Sin embargo, el gobierno federal anunció planes de usar su enorme mayoría parlamentaria para cambiar el estatus legal de las comunidades indígenas, mediante la aprobación de la "Ley de Gobierno de las Primeras Naciones", que impondrá un tipo de estatus municipal y tiene la intención de cambiar el actual estatus legal y capacidad de una Tribu India. Tal como está redactada, los detalles de esta legislación se encuentran en dos documentos emitidos en forma federal. El primero describe los aspectos claves de la ley propuesta: Estatus Legal de las Primeras Naciones (Tribus); Roles y Responsabilidades de los Jefes y Consejos; Capacidad de Delegación de las Primeras Naciones y/o Jefe y Consejo; Capacidad para crear corporaciones/comisiones Tribales; Normas respecto a los procedimientos legales del Consejo y en contra del mismo. El Documento 2 describe los elementos centrales de la ley propuesta: Autoridades de Gobierno; Administración Financiera, Responsabilidad y Resarcimiento; Consentimiento de Elecciones y Referéndum. La legislación propuesta será conectada con otro proyecto legislativo, la "Ley de las Instituciones Financieras de las Primeras Naciones", que tiene la intención de facilitar la remoción de la exención impositiva que poseen la mayoría de los indígenas (Primeras Naciones).

En 1996, el gobierno federal intentó enmendar la *Ley India* pero esto fue sonoramente rechazado por el 85% de las Tribus Indias de todo Canadá. El 12 de diciembre de 1996, enfrentado a tal oposición de las Primeras Naciones, el entonces Ministro de Asuntos Indios, Ron Irwin, decidió –literalmente a último minuto- declarar que el paquete de enmiendas de la *Ley India* sería "opcional". A pesar de esta maniobra de último minuto, las Primeras Naciones sabían que la intención federal era forzarlas a un nuevo acuerdo legal y, entonces, mantuvieron su oposición.

En 1997 murió el Proyecto de Ley C-79, la *Ley Opcional de Modificación de la Ley India,* cuando se llamó a las elecciones federales de 1997. Ahora, el gobierno federal está tratando otra vez de reempaquetar las enmiendas de 1996-97 de la *Ley India* en dos instrumentos legislativos, la "Ley de Instituciones Financieras de las Primeras Naciones" y la "Ley de Gobierno de las Primeras Naciones".

La *Ley India* no ha sido enmendada significativamente desde 1951, aunque ha habido pequeños cambios sobre tierra, membrecía y previsiones electorales. El Ministro federal está intentando utilizar el hecho de que existen más de 200 casos ante las cortes que involucran a la *Ley India*. Sin embargo, en una reunión con la Asamblea de las Primeras Naciones, el 11 de abril de 2001, funcionarios federales reconocieron que la vasta mayoría de los casos judiciales implican disputas sobre las previsiones de membrecía, **no** de las secciones de la *Ley India* que el Ministro de Asuntos Indios intenta cambiar.

Desde la experiencia de enmienda de la *Ley India* de 1996-97, quedó claro en ese entonces, y parece ser lo mismo hoy, que el deseo federal de cambiar la *Ley India* tiene más que ver con la intención de restringir el estatus legal de los poderes autónomos de las Primeras Naciones, a la vez que desmantelar simultáneamente las responsabilidades y obligaciones fiduciarias de tipo administrativo para asegurar que los programas y servicios federales en marcha cumplan con las necesidades de los pueblos de las Primeras Naciones.

Para ponerlo claramente, todo indica que el gobierno federal quiere "descargar" o devolver la responsabilidad de ofrecer programas y servicios a las Primeras Naciones, a las provincias y a las mismas Tribus. La "Ley de Gobierno de las Primeras Naciones" junto con la "Ley de Instituciones Financieras", parecen ser un nuevo "régimen estatutario y reglamentario" para llevar adelante este objetivo.

Un documento interno del Departamento de Asuntos Indios acepta que la sustentabilidad de los programas es incierta porque "el precio demográfico + el volumen de la demanda están agotando los suministros fiscales". Este es un reconocimiento de que la población de las Primeras Naciones es joven y está creciendo a un ritmo más elevado que el promedio canadiense y, por supuesto, esto significa mayores costos para el gobierno federal para poder mantener sus responsabilidades.

Para concluir, tanto el Discurso del Trono de Canadá de enero de 2001 como la respuesta del Primer Ministro, destacaron la necesidad de encarar las necesidades particulares de los niños aborígenes, la mayoría de los cuales viven en la pobreza. Queda pendiente el interrogante: ¿mantendrá el Primer Ministro Jean Chretien sus anticuadasáopiniones sobre los derechos de las Primeras Naciones, las cuales se vieron reflejadas en su "Política de Papel en Blanco sobre Indios de 1969", o reconocerá, como lo han hecho las cortes canadienses, que los derechos aborígenes y de los tratados están actualmente protegidos constitucionalmente en la sección 35, y que es necesaria una "interpretación generosa, liberal de las palabras de la previsión constitucional"? Las acciones unilaterales de su Ministro de Asuntos Indios para imponer la legislación a las Primeras Naciones parece indicar que el Primer Ministro Chretien continúa con sus opiniones asimilacionistas del pasado en vez de reconocer el derecho de las Primeras Naciones a la autodeterminación.

CANADA - III
TERRITORIOS DEL NOROESTE

Desarrollo de recursos y autonomía

El año pasado estuvo dominado, por sobre todas las cosas, por un tema urgente para los pueblos indígenas de los Territorios del Noroeste: el desarrollo de los recursos no-renovables. Los precios de los productos mundiales y las demandas del mercado han aparejado un resurgimiento del interés sobre el potencial de recursos de los Territorios. En todo el Valle Mackenzie hay una renovada actividad en los sectores petroleros, del gas, mineros y forestales. En la Provincia Geológica Slave, este proceso está bien adelantado, la mina de diamantes Ek'ati está en producción comercial, la mina Diavik recibió una aprobación reglamentaria en el año 2000 y está actualmente en construcción, y existe un interés activo con respecto a una serie de proyectos mineros diamantíferos y de metales base.

La región Deh Cho experimentó un importante impulso en la explotación del gas natural en torno a Fort Liard, que se está expandiendo hasta incluir otras comunidades, así como también existen intereses de otros productores en varios proyectos mineros. La región del Mackenzie Delta/Beaufort también contempló un aumento de los gastos de exploración de la industria petrolera y de gas, a niveles no vistos durante años. Después de un paréntesis de casi 25 años, se está considerando seriamente otra vez la construcción de un oleoducto a través del Valle Mackenzie como una de las varias rutas posibles para llevar gas natural a los mercados meridionales. En un corto período de tiempo parece haber surgido un amplio consenso entre el gobierno federal y territorial, la industria y algunos grupos indígenas, en torno al hecho de que un futuro económico viable para los Territorios del Noroeste y sus residentes yace en la explotación de sus recursos no-renovables.

Con todas estas presiones desarrollistas, los gobiernos indígenas están luchando para mantener el ritmo y sus ya limitados recursos humanos y financieros están siendo severamente exigidos. En el pasado, los proyectos mineros, petroleros y de gas en los Territorios del Noroeste siempre se desarrollaron sin el consentimiento indígena, brindaron sólo beneficios temporarios a los residentes de las comunidades y muy frecuentemente dejaron una secuela de daños ambientales y culturales duraderos.

Desde el punto de vista del gobierno y la industria, los Tratados 8 y 11 (y el acuerdo asociado con los *métis*) abrieron el camino para el desarrollo y dejaron a los *dene* y a los métis muy poco por decir sobre lo que sucedía con sus tierras. La dirección indígena y sus ancianos son profundamente conscientes de este legado de exclusión y alteración y están determinados a que no vuelva a suceder. Ellos desean fortalecer los fundamentos socioeconómicos de sus comunidades, asegurando capacitación, empleo, oportunidades empresariales e ingresos económicos de los proyectos de desarrollo. Es igualmente importante que ellos quieran asegurar que los proyectos sean ambientalmente sanos y que no haya impactos negativos sobre sus tierras, aguas y recursos tradicionales.

Los Territorios del Noroeste están testimoniando claramente un cambio importante en las actitudes indígenas con respecto a la explotación de recursos. Esto está muy lejos de los acalorados debates que dominaron los años '70 sobre el propuesto Oleoducto del Valle Mackenzie. En vez de oponerse a los oleoductos y a otros proyectos referentes a recursos no-renovables, las comunidades indígenas parecen estara hora preparadas para dar su apoyo condicionado en la medida en que participen como "socios", con plenos derechos, en los proyectos de desarrollo que tienen lugar en sus tierras tradicionales. Un objetivo básico compartido por los *inuvialuit*, dene y métis es asegurar que en cualquier decisión sobre proyectos que afecten recursos y sobre los términos bajo los cuales se realizan, tanto el gobierno como la industria respeten los derechos históricos de las comunidades indígenas de los Territorios del Noroeste y la autoridad de sus gobiernos.

Es instructivo revisar el *Informe de la Investigación del Oleoducto del Valle Mackenzie* de 1977 (el llamado "Informe Berger"). En este *Informe*, el Juez Thomas Berger argumentó que: *"la consideración sobre el desarrollo industrial y social, y sobre el progreso cultural y político en el norte, no puede separarse de una discusión sobre demandas nativas"*. Una de sus conclusiones claves era que, antes de proseguir con el desarrollo del Valle Mackenzie, las comunidades indígenas deberían tener tiempo para fortalecer sus instituciones y asegurar un reconocimiento más claro de sus derechos conforme a la ley canadiense. Por esta razón, Berger recomendó que cualquier construcción de un oleoducto fuera aplazada durante diez años para permitir el "arreglo de las demandas nativas". Este análisis parece hoy tan relevante como lo fue en los años 70: la cuestión de la explotación de recursos en los Territorios del Noroeste sigue estando inseparablemente unida con el tema de la autoridad y control de los pueblos indígenas sobre sus "territorios" tradicionales.

Los pueblos indígenas de los Territorios del Noroeste realizaron un innegable progreso en el desarrollo de sus instituciones políticas y económicas y comenzaron a encarar los problemas sociales y económicos de sus comunidades en los años transcurridos desde el Informe Berger. Tres demandas territoriales regionales han sido solucionadas -la de los inuvialuit, los *gwich'in* y los *sahtu*- y la implementacion de estos acuerdos ha estado en marcha desde hace ya varios años. El manejo conjunto de tierras, aguas y el medio ambiente de los Territorios se ha convertido en una realidad en los pasados diez años, tanto en el ámbito regional como territorial. Las comunidades indígenas ahora son consultadas rutinariamente y participan en procesos "multiaccionistas" relacionados con importantes iniciativas gubernamentales o proyectos de desarrollo. Las organizaciones comunitarias y regionales también han logrado bastante sofisticación en el trato con los productores a través de Acuerdos de Emprendimientos Conjuntos y de Impactos y Beneficios. Pero, a pesar de estos avances, los pueblos aborígenes de los Territorios han tenido un éxito muy limitado hasta ahora en cuanto al logro del reconocimiento práctico de su derecho inherente a la autodeterminación.

Las negociaciones sobre autonomía entre la Corona federal y las diferentes regiones indígenas comenzó en 1994 en los Territorios del Noroeste. Siete años mas tarde, existe un consenso general del lado indígena de que este proceso ha sido costoso, insumidor de tiempo y, en última instancia, improductivo. Probablemente lo más cercano a finalizar un acuerdo es el Consejo del Tratado Dogrib 11, que el gobierno *dogrib* ha estado negociando como parte de su acuerdo comprehensivo sobre la demanda: se llegó a un Acuerdo-en-Principio en la primavera de 1999 y se anticipa un Acuerdo final para fin de este año.

En la región de Beaufort-Delta, los inuvialuit y los gwich'in han estado procurando conjuntamente un acuerdo de autogobierno con Canadá para complementar las ya finalizadas demandas de tierra y se espera un Acuerdo-en-Principio para cualquier momento, durante el año 2001. Las conversaciones sobre autonomía con los sahtu son actualmente de base comunitaria, y las negociaciones Deline sirven como caso de prueba para el uso de este enfoque en otras partes de la región. Las discusiones sobre gobernación indígena en la región Deh Cho y en las comunidades del Tratado 8 están en estadios más preliminares y forman parte de negociaciones mucho más amplias con el objetivo de aclarar y elaborar la intención de los Tratados originales con la Corona.

Desde la perspectiva indígena, los gobiernos de Canadá y de los Territorios del Noroeste tienen la responsabilidad primaria sobre las dificultades que sufrieron estas diversas conversaciones sobre autonomía. En el papel, la *Política de Derecho Inherente* parece ser considerablemente prometedora. Pero, en las negociaciones reales, Canadá ha insistido que las leyes federales deben tener supremacía sobre cualquier ley aborigen excepto en unas pocas áreas de jurisdicción, y que fuera de las tierras de "propiedad" indígena, los derechos y poderes de los gobiernos indígenas y ciudadanos estarán sometidos en gran medida a leyes de aplicación general. La propia Política de autonomía del gobierno territorial está muy vagamente redactada y, en la práctica, la preocupación subyacente de los negociadores parece ser frecuentemente retener tanto poder gubernamental a nivel territorial (es decir, en la capital, Yellowknife) como sea posible.

Las negociaciones se demoraron una y otra vez pues los negociadores territoriales y federales solicitaron mandatos del Gabinete que les permitan encarar en forma efectiva temas que surgen en mesas específicas. El rechazo de los negociadores del gobierno a considerar estrictamente modelos "indígenas" de gobierno es un punto importante a destacar. En forma típica, han tratado de impulsar formas de gobierno públicas o híbridas sobre la base de que los derechos de los residentes no-indígenas deben ser respetados en cualquier acuerdo. El financiamiento ha sido otro punto álgido, pues Canadá y el Gobierno de los Territorios del Noroeste han jugado fútbol político sobre la cuestión de quién pagará por los costos "incrementados" de implementar un gobierno autónomo. En relación a esto, el gobierno territorial ha tratado particularmente retrasar el reconocimiento de los poderes impositivos de los gobiernos indígenas, por ser un instrumento clave para recolectar sus ingresos de "fuente propia". Un tercer punto problemático ha sido la negativa de Canadá a negociar la autoridad jurisdiccional sobre la explotación del subsuelo con los gobiernos indígenas, fuera de las tierras de "propiedad" indígena en sus territorios tradicionales, con la excepción de compartir un pequeño porcentaje de las regalías anuales de la Corona por concepto de explotación de recursos.

Para aumentar aun más estas dificultades, el gobierno territorial ha realizado esfuerzos recurrentes para lograr la autoridad jurisdiccional de Canadá sobre el subsuelo de las tierras de la Corona en los Territorios. Hasta hace poco, el llamado "Acuerdo del Norte" era considerado por estos dos gobiernos como un asunto estrictamente bilateral a ser tratado en forma aparte de la autonomía y otras negociaciones sobre derechos indígenas. Como tal, ha sido resistido por la mayoría de los grupos aborígenes, que reconocieron que esta transferencia devolutiva sólo fortalecería los poderes del gobierno territorial y recortaría la integridad de sus conversaciones sobre autonomía.

No obstante, en los pasados dos años, los términos del propuesto Acuerdo del Norte han cambiado, pues Canadá y el Gobierno de los Territorios del Norte han demostrado una cierta disposición para incluir a los gobiernos indígenas de los Territorios del Norte como socios, en un paquete comprehensivo de transferencia. Tal como se lo concibe actualmente, este Acuerdo otorgaría, tanto a los gobiernos indígenas como al Gobierno de los Territorios del Norte, una parte de los ingresos de los recursos no-renovables de la Corona y jurisdicción sobre la explotación del subsuelo. Esta propuesta no tiene precedentes en Canadá y tiene importantes implicaciones potenciales para la futura viabilidad financiera de los gobiernos indígenas, los cuales están enfocándola, correctamente, con gran precaución. En los pasados doce meses, el Foro Intergubernamental -que incluye a Canadá, el Gobierno de los Territorios del Norte y los gobiernos indígenas de los Territorios del Norte- ha surgido como un mecanismo clave para trabajar sobre los detalles de una transferencia del Acuerdo del Norte. En este punto, queda abierta la pregunta de si el Foro tendrá éxito con esta difícil tarea.

CANADA - IV
LA NACION INNU

El gobierno de la Nación Innu y las dos comunidades *innu* del Labrador continúan su lucha para encontrar formas de encarar el problema del abuso del alcohol y de las drogas. A mediados de noviembre, la dirección innu dio un paso radical cuando solicitó al gobierno provincial de Newfoundland retirar de sus hogares a un grupo de niños problematizados. Llegamos al extremo, dijo el Presidente de la Nación Innu, Peter Penashue, en que hay en la comunidad una importante cantidad de niños y jóvenes, tan pequeños como de siete años, aspirando gases. Uno de los peligros de salud que motivó esta medida fue que los niños estaban sentados en torno al fuego, en campamentos en el bosque, aspirando gases de bolsas de plástico.

El tema subyacente a esa cuestión es que el Departamento de Servicios Sociales tiene los medios legales para realizar tal acción, tanto como los recursos pertinentes para suministrar el apoyo necesario, a diferencia de la Nación Innu o los Consejos Tribales, que no disponen de los mismos.

Educación

Como se mencionó en *El Mundo Indígena* de noviembre de 1999, los gobiernos de Canada y Newfoundland llegaron a un acuerdo con la Nación Innu para transferir el control de la educación y la policía a sus propias comunidades, por ejemplo, utilizar policías innu del Consejo Tribal de cada comunidad y otorgar a los Consejos Tribales la jurisdicción que necesitan para enfrentar los abusos del alcohol y disolventes. La dirección innu está frustrada debido a que los mencionados gobiernos no han hecho un seguimiento de este acuerdo. "Comprendemos que los problemas que afectan a nuestras comunidades no serán resueltos por gobiernos o agencias externas", dice Peter Penashue en un comunicado de prensa de la Nación Innu de noviembre del año 2000, "pero si ni siquiera podemos promulgar un decreto contra el arrojo de basura, mucho menos podemos tomar medidas contra el alcohol y la aspiración de gases, suministrar educación a nuestros niños o ejercer un control policial efectivo de nuestra comunidad. Hasta que Canadá y Newfoundland no den algún efecto a los acuerdos a los que hemos llegado, nunca tendremos las herramientas y recursos que necesitamos para ser efectivos".

Con respecto a la enseñanza, mientras que todos los niños tienen el innu como su lengua materna, todo el programa está en inglés, excepto algún material provisto en los primeros grados, lo que constituye un gran problema. Otro gran problema es que los programas no reflejan de ninguna manera la cultura y la vida de los innu.

Acuerdos sobre demandas de tierra

En junio del año 2000, la Nación Innu presentó una propuesta a Canadá y Newfoundland para un arreglo justo y equitativo de sus derechos territoriales. En un comunicado de prensa, el Negociador en Jefe Innu, Daniel Ashini, dijo que la propuesta de la Nación Innu brindaría reconocimiento a la autonomía de los innu sobre 10.000 millas cuadradas de territorio en Labrador: "En esta tierra podríamos autogobernarnos conforme al tratado, desarrollar una economía y, al mismo, tiempo proteger la tierra y nuestro estilo de vida tradicional. El tamaño del área concuerda con muchos otros acuerdos de demandas de tierra en los Territorios del Noroeste, Nunavut y en el Yukón. También queremos participar en una cogestión con Canadá y Newfoundland sobre una región más extensa del Labrador. En esas áreas, los innu también podrían beneficiarse con ingresos por concepto de regalías y explotación de recursos, otorgándonos una oportunidad para ser económicamente autosuficientes". Sobre la base de una respuesta positiva del gobierno federal del Canadá y del gobierno de Newfoundland, la Nación Innu cree que se podría llegar a un Acuerdo Preliminar para fines de este año y a un Acuerdo Final en un plazo de 2 años.

En un artículo publicado en diciembre en un importante periódico canadiense, *The Globe and Mail*, el Presidente de la Nación Innu, Peter Penashue, escribe: "Actualmente estamos en negociaciones sobre las demandas y seguimos teniendo la esperanza de que Canadá y Newfoundland cambien sus posiciones sobre la cantidad de tierra y los recursos que desean que los innu abandonen. Si la propuesta de Canadá y Newfoundland prevalece, no tendremos suficiente tierra e ingresos provenientes de los recursos para construir una economía autosuficiente; seguiremos dependiendo de la seguridad social. ¿Es eso lo que los canadienses quieren? Aunque los innu están negociando demandas con Canadá y Newfoundland, estos últimos siguen entregando nuestra tierra y recursos a terceras partes para su explotación. El proyecto hidroeléctrico Upper Churchill, la mina de níquel de Voisey´s Bay y el enorme proyecto hidroeléctrico del Lower Churchill River, son sólo algunos ejemplos. Los innu han solicitado una moratoria de estos proyectos hasta encontrar una solución a sus demandas. Canadá y Newfoundland la han rechazado.

Hemos estado negociando de buena fe con Voisey's Bay Nickel, Newfoundland y Labrador Hydro con respecto a las actuales propuestas para el Lower Churchill y Voisey's Bay, pero asumimos la posición de que estos proyectos no pueden seguir adelante sin nuestro consentimiento. Si estos proyectos demuestran ser compatibles con nuestro estilo de vida y podemos obtener un índice de ingresos que todos los canadienses considerarían justo, entonces quizá los proyectos puedan continuar. Pero nos negamos a entregar nuestra tierra y nuestros recursos".

Entrenamiento militar

Varios países europeos han estado realizando entrenamiento aéreo militar sobre 130.000 kilómetros cuadrados del Labrador y del nordeste de Quebec, conforme a un Memorándum Multinacional de Entendimiento, desde Goose Bay CFB (Base de las Fuerzas Canadienses) a partir de comienzos de los años ochenta. La mayoría de los aproximadamente 6.000 vuelos de entrenamiento anuales son realizados por aviones de combate a reacción que vuelan a baja altura (menos de 100 pies sobre el nivel del suelo). El pueblo innu se ha opuesto durante mucho tiempo a las actividades militares sobre su territorio, fundamentalmente por las consecuencias del impacto de los ruidos de los aviones y por la contaminación de seres humanos y de la fauna.

Se realizó una evaluación ambiental de las actividades de vuelos a baja altura sobre la base de una declaración de impacto ambiental (EIS) preparada por el Departamento Canadiense de Defensa Nacional en 1994. El EIS de 1994 estableció: "Las LLTA's (áreas de entrenamiento a baja altura) no incluyen los vuelos supersónicos, ni tampoco hay planes de aprobar ningún tipo de vuelo supersónico conforme al Memorándum Multinacional de Entendimiento".

A pesar de esto, en julio de 2000, el Departamento Canadiense de Defensa Nacional dio a la Nación Innu un previo aviso de tres días de que la Fuerza Aérea Real de Holanda realizaría vuelos supersónicos de prueba sobre los territorios de caza innu. Cuando la Nación Innu presentó una demanda judicial, los vuelos fueron pospuestos hasta junio de 2001.

Las explicaciones dadas por la Defensa Nacional para quebrantar la prohibición de 1994 es que la misma estaba basada en una descripción de proyecto, que en ese momento no incluía vuelos supersónicos. Con la introducción de un nuevo avión de combate (el Eurofighter Typhoon), que será operacional dentro de unos tres o cuatro años a partir de la fecha y que tendrá una capacidad crucero supersónica, ahora se ve la necesidad de facilitar entrenamiento aéreo supersónico en Goose Bay.

Los riesgos potenciales de las actividades supersónicas sobre los cazadores innu y sobre la fauna son de particular preocupación para la Nación Innu. Un experto explica que los vuelos supersónicos a 5.000 pies pueden generar olas de choque que pueden producir daños irreversibles en los pulmones humanos, vísceras, oídos y también pueden causar lesiones cerebrales. Un ser humano directamente debajo del trayecto de un avión volando supersónicamente a 15.000 pies estaría probablemente expuesto a sonidos que exceden los 130 dB, que es el umbral del dolor.

Fuentes

Innu Nation Asesores ambientales Larry Innes y Stephan Fuller
The Globe and Mail, diciembre 7, 2000

LOS ESTADOS UNIDOS DE AMERICA

Los pueblos nativos de los Estados Unidos siguen luchando por una mayor autodeterminación en el comienzo del nuevo milenio. Consecuentemente, los pueblos indígenas están encarando temas relativos al desarrollo sustentable de las tierras de sus reservas, la protección de sitios sagrados en tierras públicas y privadas, el derecho a la propiedad intelectual, la industria de los juegos de azar, problemas con la Ley de Repatriación y Protección de los Cementerios Nativos Americanos y el papel del estado y de las agencias federales en los asuntos tribales.

Las realidades demográficas y los factores de salud son obstáculos importantes para un mayor autogobierno y autosuficiencia. De acuerdo al censo de 1999, 2,4 millones de personas se identificaban como nativos americanos. Sin embargo, sólo 1,7 millones de estos individuos están en realidad afiliados a una tribu reconocida federalmente. De los miembros tribales registrados, aproximadamente 900.000 viven en reservas. La población restante reside principalmente en áreas urbanas ubicadas en uno de los siguientes estados: Oklahoma, California, Arizona, Alaska, Washington o Nuevo México.

Debido a los altos índices de mortalidad, la edad promedio de los nativos americanos es ocho años menos que la de la población en su conjunto. Las enfermedades cardiovasculares son la causa principal de mortalidad entre los pueblos nativos. El homicidio, el suicidio, los accidentes y las muertes relacionadas con el alcohol, son problemas endémicos entre los adolescentes y los adultos de poco más de 20 años. El Buró de Asuntos Indios (BIA), la agencia que supervisa los asuntos nativos, estima que el índice de muertes relacionadas con el alcohol entre los pueblos nativos es cuatro veces mayor que el promedio de los Estados Unidos.

El desempleo sigue siendo una plaga para los pueblos nativos. Aproximadamente el 50% de los adultos que vive en más de 300 reservas en los Estados Unidos está desempleado. El 30% de los adultos empleados vive bajo el nivel de pobreza establecido por el Departamento de Salud y Servicios Humanos. Si se incluye a todos los nativos americanos registrados, el desempleo alcanza al 14,4% comparado con el 6,3% para el resto de los ciudadanos de los Estados Unidos.

Para cumplir con la Iniciativa Nativa Americana, discutida por el Presidente Clinton durante su visita a la Reserva de Pine Ridge en 1999, el Buró de Asuntos Indios solicitó $ 9,4 mil millones de dólares del presupuesto general para el 2001. Esto es más del 14% de lo solicitado en el año 2000. Con este dinero, el BIA quiere fortalecer programas fundamentales para el futuro de los pueblos nativos. Entre estos programas se incluye la educación de 50.000 estudiantes primarios y secundarios que asisten a 185 escuelas; la continuación de 25 universidades comunitarias de control tribal; la capacitación de personal encargado del cumplimiento de las leyes; servicios sociales para los ancianos y discapacitados; mejor manejo de los recursos de tierras en fideicomiso, el mantenimiento de más de 25.000 millas de caminos en reservas rurales aisladas y la implementación de acuerdos sobre demandas de tierra y agua.

Desarrollo sustentable en tierras de las reservas

Dos condiciones, crónicas para las reservas, limitan la capacidad de los consejos tribales para crear oportunidades para el desarrollo sustentable. En primer lugar, la tierra de la reserva es detentada en fideicomiso por el gobierno federal. Como resultado, la responsabilidad de BIA para ayudar a los esfuerzos de las comunidades nativas para obtener una mayor autodeterminación está en conflicto con el papel de la agencia como protectora de los recursos de la reserva. El caso Cobell vs. Babbitt ilustra claramente este problema. Como Secretario del Interior durante la administración de Clinton, Babbitt fue demandado por Elouise Cobell sobre el manejo del Buró de los fondos fideicomisarios. Como demandante principal, la Sra. Cobell requería que el BIA proveyera los registros de más de 500.000 cuentas fideicomisarias individuales. Estas cuentas incluyen regalías por tierra adjudicada a rancheros y granjeros, así como a corporaciones dedicadas a la extracción de recursos. Actualmente, el Departamento del Interior no puede encontrar los registros de 100 millones de fondos fideicomisarios o sea 2,4 mil millones de dólares detentados en custodia para los nativos. En 1999, Royce Lamberth, un Juez Federal de Distrito, declaró a Babbitt y al Secretario del Tesoro y ex Secretario para Asuntos Indios, en desacato a la corte. El juez exige que el BIA determine todo el dinero debido a los pueblos nativos, comenzando con la Ley de Adjudicación de 1887. Presumiblemente, el problema será resuelto por Gale Norton, nombrada Secretaria del Interior por el Presidente Bush.

Un segundo factor que limita la capacidad de una tribu para obtener autosuficiencia y autodeterminación son las diferencias abismales en las facilidades educativas de las reservas. De acuerdo al informe presupuestal de 2001 del BIA, muchas escuelas de las reservas están en estado estructural deficitario y/o son de tamaño insuficiente para educar a los futuros estudiantes. Sólo el 62,5% de los indígenas se gradúan de la secundaria, comparado con el 75,2% de la población de los EE.UU. en su conjunto. El hecho de que meramente el 9,3% de los estudiantes indígenas se gradúan de la universidad comparado con el 20,3% de la población en general, es aún peor. Sin buenas oportunidades educacionales, pocas empresas están interesadas en invertir recursos en tierras de reserva.

El Presidente Bush prometió otorgar 1.000 millones de dólares a las escuelas de los nativos americanos durante su campaña. Si esto se verá

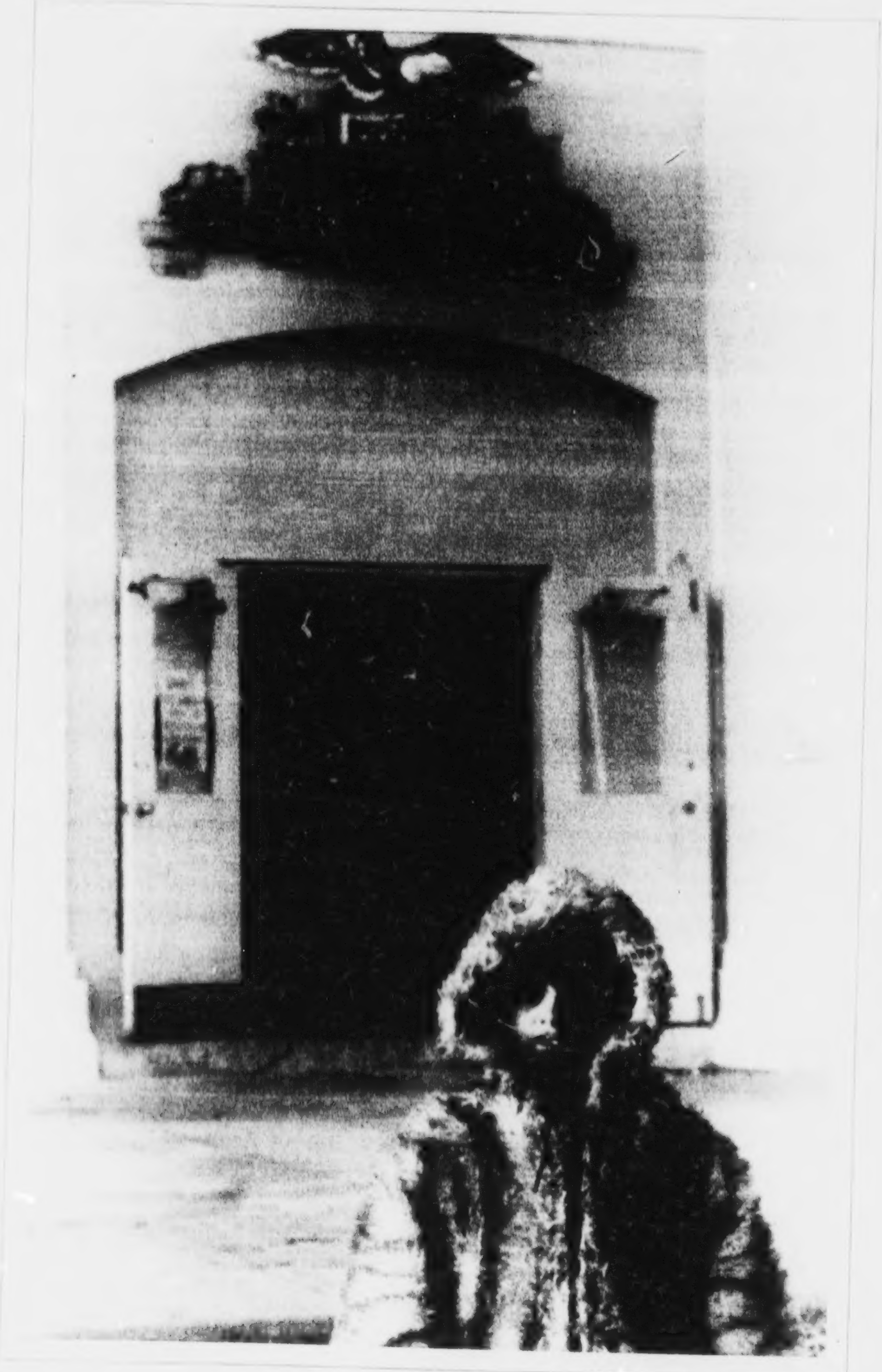


Foto: Michaelle Vignes

BEST COPY AVAILABLE

reflejado en su presupuesto es algo que aún no se sabe. Sin estos fondos, sin embargo, será imposible que el Gobierno Federal cumpla con los objetivos de la Iniciativa India Americana (AII), introducida durante el mandato del Presidente Clinton, de canalizar recursos médicos, económicos y educacionales hacia las reservas.

Industria de los juegos de azar de los nativos americanos

Los juegos de azar se han convertido para algunas reservas nativas en una alternativa económica viable para combatir los altos índices de desempleo y pobreza. En 1987, la Suprema Corte de los Estados Unidos aprobó la ley Cabazon, que permite los juegos de azar en las reservas nativas. Debido al crecimiento espectacular de la industria, el Congreso promulgó la Ley Reguladora de los Juegos de Azar Indios (IGRA) en 1988. Básicamente, esta ley brinda un marco regulatorio y un organismo supervisor para los juegos de azar de las reservas. La mitad de los más de 2.000 millones de dólares generados por esta actividad es recibida por diez de las 184 tribus involucradas en la industria. Aunque la Suprema Corte concedió a las comunidades nativas el poder de determinar si querían, o no, ofrecer al público juegos de azar, la IGRA logró sentenciar que una tribu debe asumir un contrato con el estado en el cual está ubicada la reserva. Algunos estados han vacilado o incluso han sido hostiles frente a la posibilidad de la legalización de los juegos de azar dentro de sus límites. Esto ha probado ser algo de gran polémica en el estado de Nebraska, por ejemplo. En esta área, la tribu *santee* abrió un casino con máquinas tragamonedas. Como resultado se crearon 23 empleos. Desgraciadamente para los santee, los legisladores de Nebraska consideran que el casino es ilegal porque la tribu nunca hizo un contrato con el estado. Cada día que el casino permanece abierto hace que la tribu sea multada en varios miles de dólares. Incluso así, la tribu celebró elecciones especiales y votó mantener el casino en operaciones. Tienen la esperanza, de que en última instancia, el pueblo de Nebraska también vote a favor de permitirles continuar operando el casino. Desafortunadamente, la legislatura todavía tiene que permitir que el tema sea votado por los ciudadanos del estado. Durante los últimos dos años, el comité estatal responsable de este tema ha impedido a los otros legisladores, así como a los ciudadanos del estado, votar sobre el derecho de los santee a ofrecer juegos de azar.

No queda claro si Gale Norton, en su papel de Secretaria del Interior y la supervisora en última instancia de los asuntos indios, ayudará a los santee en la lucha contra el estado de Nebraska. Sus opiniones sobre el estado versus derechos tribales son difíciles de determinar. En el momento de su confirmación en el gabinete de Bush, Norton declaró, *"las decisiones de gobierno son mejor tomadas por aquellos que se ven afectados. Lo que es cierto para los estados es cierto para las tribus. La autonomía es importante y la apoyo como concepto".*

Protección ambiental de las tierras nativas

La Agencia Reguladora Nuclear comenzó en los años 80 y continuó a través de los 90 su intento de convencer a las comunidades de las reservas a aceptar desechos nucleares. A los consejos nativos dispuestos a escuchar diversas propuestas relativas a la creación de lugares de almacenamiento para desechos nucleares, se les ofreció incentivos financieros de varios cientos de miles de dólares. Como el estado de Oklahoma contiene a la mayoría de las comunidades nativas, cada una con diferentes cantidades de tierra, estas tribus se han convertido en los blancos principales de la agencia. En respuesta, 31 tribus de Oklahoma formaron la Agencia Ambiental Tribal (ITEC) para impedir el almacenamiento de desechos nucleares en sus tierras. A nivel nacional, las comunidades nativas han formado la Coalición Ambiental Nacional de Nativos Americanos (NECONA) para ayudar a mantener a las reservas libres de desechos nucleares.

En mayo de 2000, las comunidades nativas del Desierto de Mojave, en California, detuvieron con éxito el almacenamiento de desechos nucleares en Ward Valley. Con la ayuda de NECONA y un consorcio de grupos ambientalistas, el proyecto fue detenido para proteger a la tortuga del desierto y las sendas sagradas para los pueblos nativos de la región.

Es de esperar que la tribu *paiute* de Pyramid Lake, de Nevada, tenga el mismo éxito en detener el desarrollo de una planta de tratamiento de aguas residuales por la Compañía Truckee, con sede en California. De acuerdo a los paiute, el proyecto de expansión del tratamiento de aguas residuales, de 42 millones de dólares, tendrá impactos negativos en el Río Truckee y en el Lago Pyramid. Ambas regiones son importantes para las necesidades de subsistencia de la comunidad paiute de Pyramid Lake.

Protección de sitios sagrados en tierras públicas y privadas

Los pueblos indígenas han tenido poco éxito en la protección de sus sitios sagrados que no están ubicados en tierras de propiedad tribal. La Suprema Corte ha sentenciado invariablemente en contra de los pueblos indígenas con respecto a este tema. En 1996, el Presidente Clinton encaró el tema solicitando a las agencias federales, (1) organizar el acceso y el uso ceremonial de los sitios sagrados indígenas de los practicantes religiosos indígenas y (2) evitar afectar negativamente la integridad física de tales sitios sagrados. Sin embargo, la desventaja de estos puntos, en sí saludables, es el hecho de que no son más que meras sugerencias. Actualmente, las agencias federales no tienen ninguna obligación legal de proteger sitios que afecten el uso de tierras bajo su control. Como resultado, las tierras con sitios sagrados pueden continuar usándose según los mandatos de la agencia federal que regula la región. Según la Suprema Corte, no se puede permitir a ningún grupo étnico un mayor acceso al espacio público de la nación que a otras personas que residen en los Estados Unidos.

En respuesta, algunas agencias federales, particularmente algunos miembros del Servicio Nacional de Parques, están brindando información a los visitantes, solicitándoles que respeten el uso nativo del área. Como resultado, a los escaladores de rocas se les solicita no usar pilotes en las montañas sagradas del sudoeste, California, el área costera del noroeste y las Black Hills en las Llanuras del Norte. Además, se solicita a los turistas que no tomen fotografías de los indígenas dedicados a actividades religiosas en sitios sagrados ubicados en tierras públicas. En este momento, el cumplimiento de estas directivas por parte de una persona es totalmente voluntario.

Demandas territoriales

Numerosas comunidades nativas han luchado para recuperar tierras que les fueron usurpadas en el pasado. Aunque en 1983 se prometió a la Tribu Timbisha Shoshone una base territorial permanente en Death Valley, todavía no han recibido ningún espacio. Actualmente, esta batalla está abriéndose camino a través del sistema federal de justicia. Muchas otras comunidades nativas están procurando obtener reconocimiento federal y también la propiedad de tierras que les fueron ilegalmente usurpadas. Esto ha conducido a algunas disputas internas entre comunidades reconocidas y no reconocidas federalmente. Como el Congreso tiende a limitar la cantidad de dinero que otorga a los pueblos nativos, las tribus federalmente reconocidas están preocupadas de que una afluencia de comunidades recientemente reconocidas disminuya la cantidad de recursos monetarios disponibles. Este temor no es infundado. En general, el Congreso tiende a repartir la torta en trozos más pequeños en vez de aumentar la suma total. Actualmente, más de treinta comunidades nativas están intentando obtener reconocimiento federal. Esto es una tarea ardua, porque la comunidad necesita cumplir con numerosos requisitos para obtener la afiliación federal.

Propiedad intelectual

Los pueblos nativos continúan luchando por el derecho a controlar el uso de sus símbolos, nombre y conocimiento. Muchos nombres usados por equipos deportivos profesionales y amateurs han sido apropiados de los pueblos nativos. A nivel profesional, los Atlanta Braves y los Redskins aún no han cambiado de nombre aunque los líderes nativos les solicitan hacerlo continuamente. Existe una situación similar con muchos equipos deportivos del nivel secundario. Hasta ahora, las cortes han sentenciado que los nombres y símbolos tribales son de dominio público y consecuentemente, se considera que no están protegidos por las leyes de propiedad intelectual.

Ley de Repatriación y de Protección de los Cementerios Americanos

Aprobada en 1990, la Ley de Repatriación y Protección de los Cementerios Americanos (NAGPRA) protege los restos óseos, artículos sepulcrales y objetos ceremoniales asociados con tribus reconocidas federalmente. Sin embargo, NAGPRA sólo cubre objetos que están en manos de instituciones que reciben financiamiento público. Los objetos de propiedad de coleccionistas privados, ubicados en tierras privadas, o tomados como botines de batalla, no están cubiertos por la ley. Además, los restos óseos de afiliación tribal desconocida no están protegidos por la ley. En una decisión sin precedentes, la Universidad de Nebraska acordó devolver todos los restos indígenas de procedencia desconocida a los pueblos nativos de las Grandes Llanuras. Desgraciadamente, las comunidades indígenas de la Región todavía tienen que llegar a un acuerdo sobre un lugar para enterrar a estos individuos. Es de esperar que logren establecer una estructura para encargarse de estos individuos de ancestros desconocidos y devolverlos a la tierra.

MEXICO Y
AMERICA CENTRAL

BEST COPY AVAILABLE

MEXICO Y AMERICA CENTRAL

MÉXICO

Los acontecimientos más relevantes en México con efectos para el mundo indígena pueden resumirse en dos: a) el proceso electoral del que resultó ganador un candidato de oposición y, b) la exitosa marcha-caravana zapatista los meses de febrero y marzo de 2001, que tuvo como principal propósito construir un consenso nacional en torno al reconocimiento de los derechos de los pueblos indígenas.

La combinación del paréntesis transformador que abrió la alternancia política y la marcha zapatista creó desde diciembre de 2000 (fecha en que asumió la presidencia de la República Vicente Fox del Partido Acción Nacional) una coyuntura extraordinaria que abrió posibilidades reales para que el Congreso de la Unión -las Cámaras de Diputados y Senadores-se ocupara de crear los consensos necesarios que pueden llevar a reformas constitucionales en materia de derechos y cultura indígenas, que den respuesta a los compromisos que el gobierno federal asumió con el Ejército Zapatista de Liberación Nacional (EZLN) y que quedaron plasmados en los llamados Acuerdos de San Andrés Larráinzar de febrero de 1996.

No obstante, al concluir la primera quincena del mes de abril, dos semanas después de del retiro zapatista de la ciudad de México, las cosas no eran claras respecto a los alcances de los derechos que deberían de ser reconocidos. El principal punto de tensión, reiteradamente expresado por los principales actores políticos, fue sus dudas respecto a los alcances de los derechos indígenas, en particular en lo relativo al reconocimiento del derecho de libre determinación y su concretización a través de la autonomía.

Una vez asumido el compromiso de reformar la Constitución por parte de los legisladores, queda pendiente por saber, ¿qué tanto se podrá avanzar, en profundidad, con dicha reforma? Y es que, aunque efectivamente nunca antes de la caravana zapatista, las condiciones para legislar en torno a los derechos indígenas habían sido mejores; no es seguro empero que los resultados en términos de alcances de derechos, mantengan un perfil alto. La clase política mexicana – en especial los partidos políticos - ha mostrado una tendencia a reducir progresivamente los alcances de los acuerdos de San Andrés. Tal preocupación es válida toda vez que, desde 1996 hasta 2000, en cada ocasión que dichos Acuerdos se abrían para la re-negociación, ésos han sido constantemente disminuidos, tanto en su perfil como en sus alcances.

Pese a estos desafíos, es evidente que después del triunfo de Vicente Fox y de la marcha-caravana zapatista, el escenario para lograr el reconoci-

BEST COPY AVAILABLE

OCEANO
ATLANTICO
MEXICO
CUBA
REP DOMINICANA
BELICE
HONDURAS
JAMAICA
HAITI
PUERTO
RICO
TRINIDAD Y TOBAGO
OCEANO
PACIFICO
GUATEMALA
EL SALVADOR
NICARAGUA
PANAMA
COSTA RICA

Zapatistas en una reunión, México. Foto: Franziska K. Nyffenegger

BEST COPY AVAILABLE

miento de derechos autonómicos indígenas, podría ser, ahora sí, una realidad.

Los indígenas en las elecciones del año 2000

Los resultados de la jornada electoral para elegir el presidente de la República en México, el 2 de julio de 2000, fueron sorpresivos. Por primera vez, en más de setenta años, el Partido Revolucionario Institucional (PRI) fue derrotado. Pero el voto en las regiones indígenas no trajo sorpresas. Como había sucedido en el pasado, el PRI volvió a ganar en esas regiones. El sistema corporativo priísta funcionó de nuevo, lubricado por un sistema político que opera a través del uso clientelar de los recursos de la política social, especialmente de aquellos destinados para los pobres. Pero en esta ocasión, dichos votos no fueron lo suficientemente numerosos para evitar el triunfo de Vicente Fox, candidato del Partido Acción Nacional, que obtuvo la presidencia sobre la base de los sufragios de las zonas urbanas y del occidente y norte del país. Lo novedoso de la participación indígena en el proceso electoral, fue la estrategia que asumieron algunas organizaciones indígenas, que en esta ocasión no votaron incondicionalmente a favor de candidatos de partidos de oposición – especialmente del espectro de la izquierda - porque ésos se negaron a pactar alianzas. En 1994, un bloque de las principales organizaciones indígenas del país, convocó a la celebración de la Primera Convención Nacional Electoral Indígena. En ese evento escucharon el programa y propuestas en materia indígena de todos los candidatos de los partidos políticos contendientes, con excepción del candidato del PRI que no se presentó al debate. Fue también el escenario para que las organizaciones plantearan la agenda política específica del movimiento indígena. En el contexto del levantamiento zapatista y en una coyuntura de fortalecimiento del movimiento indígena, los partidos políticos pactaron alianzas con algunas organizaciones indígenas. El resultado fue que la LVI Legislatura (1994-1997) tuvo el mayor número de legisladores indígenas en la historia del país.

Sin embargo en el año 2000, los partidos de oposición se negaron a establecer acuerdos con el movimiento indígena no partidario. Así las cosas, en mayo de 2000 un bloque de 6 organizaciones indígenas nacionales - de todo signo, desde la Asamblea Nacional Indígena Plural por la Autonomía-ANIPA, hasta el Consejo Indígena Mexicano, filial del PRI - decidieron elaborar una agenda política indígena, que presentaron a todos los candidatos que contendían a la presidencia de la República.[1] De los puntos planteados más relevantes se destacan: la exigencia del cumplimiento de los Acuerdos de San Andrés, la aprobación de la iniciativa de Ley elaborada por la COCOPA, de la creación de un Centro de Lenguas Indígenas, la creación de un Consejo Nacional para el Desarrollo de los Pueblos Indígenas, la desmilitarización en las regiones indígenas y el reclamo de cancelación de las políticas indigenistas, de forma que sean los propios indígenas los que conduzcan las instituciones de gobierno encargadas de las políticas hacia los pueblos indígenas.

Este pliego de demandas no tuvo respuestas ni del candidato del PRD ni tampoco del PRI. Para sorpresa de los indígenas y del resto de los mexicanos, sí lo tuvo de parte del candidato Vicente Fox y lo hizo de una manera contundente: publicó, el 14 de junio de 2000, en el diario *La Jornada*, una plana completa en la que hacía suyo el pliego de demandas de estas organizaciones y se comprometía a que asumiría como propia la propuesta de reformas de la COCOPA, al convertirla en una iniciativa del poder ejecutivo que presentaría el primer día de su gobierno, en caso de resultar triunfador en la contienda electoral.

En efecto, el primer día, al asumir su cargo como presidente de la República, el presidente Fox dio instrucciones en su calidad de jefe supremo de las fuerzas armadas para que se procediera al retiro de ciertos retenes, a la disminución de efectivos militares y al desmantelamiento de algunos campamentos militares en Chiapas. Al mismo tiempo, envió al Congreso de la Unión una iniciativa de reformas a la Constitución que recogía textualmente las propuestas de la COCOPA en materia de derechos y cultura indígena. Las resistencias ya no estaban entonces en el poder ejecutivo, como sí lo estuvieron durante el periodo de gobierno del presidente Ernesto Zedillo, sino que el rechazo a la propuesta se concentraría, entonces y hasta hoy día, en los diputados y senadores.

Al mismo tiempo y en las mismas fechas, el EZLN, anunciaba que saldría de Chiapas rumbo a la ciudad de México a buscar una entrevista con los senadores y diputados para lograr la aprobación de la mencionada reforma. Desde el anuncio de la marcha, los zapatistas expresaron claramente que iban a la capital del país a apoyar la propuesta de la COCOPA, y que no iban a entrevistarse con el poder ejecutivo y tampoco con sus comisionados, y que su caravana no tenía como propósito ir a firmar la paz y a entregar las armas si antes no se cumplían las "tres señales de buena voluntad" de parte del poder ejecutivo federal, como condiciones para reiniciar el diálogo.

El 28 de marzo de 2000, la fecha culminante de la exitosa caravana, los comandantes del EZLN estuvieron en la Cámara de Diputados compareciendo ante la nación. Allí presentaron sus razones y argumentos a favor de los derechos indígenas, cumpliendo con ello la meta que la caravana se había propuesto. Y aunque los resultados de tal gestión todavía no se han concretado, en virtud que al concluir este informe, el Senado de la República aún no había emitido su dictamen sobre la iniciativa COCOPA-Fox, el proceso ya ha comenzado y se espera que el mismo concluya a fines de abril. Con este acontecimiento, se podrá dar por concluido un ciclo, al tiempo que se abre una nueva fase para los derechos de los pueblos indígenas de México.

La Caravana del Color de la Tierra por los Derechos Indígenas

El retorno de los 23 comandantes indígenas y del sub-comandante Marcos a Chiapas, sanos y salvos, con las metas cumplidas y con una fuerte dosis de legitimidad para su movimiento y para la causa indígena, fue posible gracias a la participación de muchos actores, tanto en el terreno nacional, como internacional. Y aunque el saldo es positivo, pudo haber sido lo contrario. Durante 36 días de la marcha-caravana, en la capital de México pudo apreciarse un país profundamente dividido en dos partes, una clase política polarizada en dos grandes bloques. El tema de los derechos indígenas fue el escenario en donde se debatieron dos proyectos de país, uno que aspira a la posibilidad de un México que dé cabida a los indígenas con plenos derechos, y otro que continúa manteniendo la idea del Estado mestizo, del Estado monoétnico, al que los indios deben de ser incorporados de manera coactiva.

La marcha-caravana se realizó pese a que en los primeros días recibió amenazas, al tiempo que se produjo una fuerte confrontación con el poder. La primera pugna fue con los representantes del presidente Fox que pedían al EZLN una entrevista discreta para acordar temas relativos a la seguridad de la marcha; pero los zapatistas se negaron. El EZLN prefirió el acompañamiento de la Cruz Roja Internacional. Sin embargo esta institución se deslindó; negativa que generó una airada respuesta de los zapatistas, acusando a personeros del presidente Fox de haber presionado al organismo internacional para impedirlo.

El preámbulo de la marcha estuvo precedido por declaraciones de los diversos grupos de poder en el país que condenaban la marcha. Algunos representantes de grupos empresariales demandaron apresar a los zapatistas una vez que hubieran cruzado la frontera del Estado de Chiapas. Otro empresario restó importancia a los reclamos indígenas y dijo que *"la raíz de los problemas indígenas está en el alcoholismo, en las costumbres machistas y en peleas que derivan de rencillas idiotas. Son una bola de locos"*. Mientras que otro representante de ese sector calificó a la caravana como "espectáculo Hollywoodesco".

Algunos miembros de la clase política contribuyeron al clima en favor del linchamiento de la marcha. El gobernador del estado de Querétaro pidió la pena de muerte para los zapatistas, mientras que un diputado local del estado de Morelos retó a duelo al subcomandante Marcos. Un miembro de la Iglesia, el Obispo de Ecatepec, opinó que el sub-comandante Marcos era un "pobre diablo" y le restó valor a la caravana. Algunos debatían sobre la legalidad de la marcha, sobre el uso del pasamontañas y la presencia de las armas en la caravana. Otros, la mayoría, pedía respeto y tolerancia.

El mismo presidente Fox llamó a los miembros de su partido a la cordura y pidió colaborar para la seguridad de los zapatistas. Al mismo tiempo, la comandancia zapatista decidió usar su propio sistema de seguridad (al principio integrado por un grupo internacionalista solidario de nacionalidad italiana, conocidos como los "monos blancos") y decidió rentar autobuses para el viaje al tiempo que dejaba sus armas en la comunidad de La Realidad, sede de la comandancia zapatista, en resguardo del comandante Moisés.

El EZLN salió desde La Realidad el día 24 de febrero, dando comienzo a un largo recorrido de 36 días de duración. Al salir de Chiapas, el subcomandante Marcos pronunció un discurso en San Cristóbal de las Casas y bautizó la caravana *"por los derechos de los del color de la tierra"*.

Es importante destacar que la marcha-caravana zapatista tuvo un propósito coadyuvante hacia la paz. Desde que el EZLN se había retirado de la mesa de negociaciones, afirmó que sólo regresaría a ella sí el gobierno cumplía con los compromisos asumidos en San Andrés Larráinzar. En cuanto que el propósito de dicha caravana fue argumentar de viva voz en el Congreso a favor de las reformas constitucionales para que las mismas puedan realizarse, los zapatistas estaban abonando hacia el cumplimiento de dichos Acuerdos. Si los diputados y senadores cumplen con este compromiso, se estará despejando el camino para reanudar el diálogo.

Las otras condiciones planteadas por el EZLN, (las llamadas "tres señales" exigidas al poder ejecutivo antes de reanudar el diálogo) tales como la liberación de presos zapatistas y el desmantelamiento de ciertas bases militares, se han ido cumpliendo poco a poco, de tal forma que es posible que en el segundo semestre de 2001, pueda continuarse el proceso de diálogo interrumpido desde 1996.[2] Antes de salir de la selva, el EZLN dijo al presidente Vicente Fox: *"...los zapatistas sí tenemos palabra. Si las tres señales demandadas se cumplen, habrá diálogo. A una voluntad seria y verdadera de diálogo y paz, el EZLN responderá igualmente."*

Los límites del optimismo

La caravana zapatista logró lo que parecía imposible: sumar a miles de mexicanos a favor de la causa indígena. Después de la profunda polarización que el país vivió durante las dos primeras semanas de la marcha, los ánimos fueron atemperándose y la amenaza de peligro de un México fracturado o "balcanizado" fue diluyéndose poco a poco.

El 29 de marzo, un día después de la aparición de los zapatistas en la tribuna del Congreso nacional, el diario nacional *Reforma* publicó una encuesta sobre la legitimidad de las demandas de los derechos indígenas y la necesidad de su reconocimiento. Más del 90 % de los encuestados confirmó que era necesario que se legislara sobre los derechos indígenas. Al mismo tiempo, las posturas más radicales, como la que habían mostrado algunos legisladores del ahora gubernamental Partido Acción Nacional (PAN), que se oponían frontalmente al presidente de la República - de su propio partido - y que se negaban a recibir a los zapatistas, al final aceptaron sumarse a las comisiones legislativas constituidas para debatir la propuesta de la COCOPA, convertida en iniciativa del presidente Fox, aunque con reservas.

Hay que señalar que estos acontecimientos son del todo novedosos en México. Dominada por un fuerte presidencialismo, en el pasado la vida parlamentaria hegemonizada por el PRI no se atrevía a contradecir los mandatos del presidente de la República. Hoy, la alternancia política ha traído una nueva relación entre los poderes ejecutivo, legislativo y judicial, que comienzan a constituirse en verdaderos contrapesos. La falta de prácticas democráticas y de vías institucionalizadas para el debate parlamentario hizo que este episodio se caracterizara por una fuerte confrontación entre partidos y poderes. No obstante, al final el debate de los "derechos de los del color de la tierra" quedó incorporado a la agenda de la nación. Es relevante destacar la importancia que en este episodio tuvo el movimiento indígena nacional, agrupado en torno al Congreso Nacional Indígena (CNI) que validó y acompañó a la caravana. Su presencia restó fuerza a los argumentos que pretendían descalificar a los zapatistas como representantes de todos los indígenas de México. Lo importante era, se concluyó, que más relevante que la "representación" de los zapatistas de "todos los indígenas de México" era que sí eran, frente al Congreso de la Unión, los portadores de la agenda indígena que había quedado plasmada en los Acuerdos de San Andrés, especialmente en lo relativo al reconocimiento del derecho de libre determinación y su realización a través de la autonomía. Y es que difícilmente hubiera podido ser de otra manera.

En el desarrollo de los acontecimientos, desde 1994, hasta nuestros días, ha quedado claro que los derechos de los pueblos indígenas de México no hubieran ganado visibilidad, ni tampoco relevancia en la agenda nacional, si no hubieran sido respaldados por la guerrilla. Sólo la fuerza de las armas fue lo que hizo posible que la clase política, y en general la sociedad mexicana, comprendieran la importancia y la legitimidad de los derechos indígenas para la vida democrática del país; comprensión que, no obstante, en los hechos tiene dificultades para concretarse.

Debido a las grandes resistencias y dificultades que han tenido que enfrentar los Acuerdos de San Andrés, el optimismo de los resultados de la marcha y de lo que vaya a quedar incorporado a la Constitución, debe ser moderado. En efecto, todo hace suponer que el techo de los derechos indígenas que vayan a ser reconocidos en el Congreso, no tendrá la altura de lo acordado en San Andrés e incluso se teme que no se mantenga el "espíritu de los acuerdos". Hay motivos para dudarlo. La aceptación de la firma de los llamados Acuerdos de San Andrés por parte del EZLN se realizó bajo protesta. El EZLN los firmó pero los llamó "Acuerdos mínimos".

Una de sus principales objeciones fue que en los Acuerdos no quedó expresamente señalado que la autonomía iba a ser realizada mediante un

Indígenas protestando en San Cristóbal de las Casas, México. Foto: Heidi Moksnes

"Régimen autonómico", entre otras omisiones.[3] Había razones para preocuparse. Desde los Acuerdos, la llamada "autonomía" se reduce a un catálogo de derechos que fueron llamados "autonómicos", pero que no quedaron inscritos en el marco de un régimen autonómico y tampoco se precisó el ámbito de su realización. Por ello, aún cuando hubiera intención de mantener en su integridad la COCOPA-Fox, ésta es limitada en virtud que constituye un catálogo de "derechos autonómicos", acotados y subordinados a la acción estatal, y existe el peligro que éstos se vean aún más limitados

Por estos motivos, uno de los principales puntos del debate de dicha reforma se encuentra en precisar el ámbito de su realización. Aparentemente, lo más que se logrará será que la misma se establezca en la escala de lo comunitario y lo municipal. Así el alcance de los derechos autonómicos quedará reducido a la "autonomía comunitaria" y a la "autonomía municipal". Pese a estas limitaciones, para los diputados y senadores que ahora revisan la propuesta de la COCOPA-Fox, tales derechos resultan "anticonstitucionales", por lo que insisten en eliminar varios de los compromisos firmados en San Andrés. Muchos de ellos han propuesto que se omitan derechos que tienen que ver con "libre determinación", "autonomía", "pueblo", "comunidad" y que queden reducidos a una "autonomía municipal". Es decir, los diputados y senadores indígenas proponen reconocer los derechos indígenas, pero sin modificar al Estado mexicano, sin modificar los principios homogeneizadores en que está basada la Constitución mexicana: en resumen, cambiar para que nada cambie. Y es que lamentablemente, estas limitaciones no fueron salvadas ni siquiera en la tan citada propuesta de la COCOPA. El modelo de formulación del reconocimiento de los "derechos autonómicos" que elaboró ese organismo y que retomó el presidente Fox está construído de una forma tal que concede derechos, pero al mismo tiempo los acota. Veamos algunos ejemplos de derechos reconocidos y de los límites que sufren:

- Derecho a la libre determinación y, como expresión de ésta, a la autonomía (Art. 4°).
  Límite: como parte del Estado Mexicano (Art. 4°).

- Derechos para decidir: sus formas internas de convivencia y de organización social, económica, política y cultural (Art. 4°).
  Límite: como parte del Estado mexicano (Art. 4°).

- Derechos para aplicar: sus sistemas normativos en regulación y solución de conflictos internos, (Art. 4°).
  Límite: Respetando las garantías individuales, los derechos humanos y, en particular, la dignidad e integridad de las mujeres; sus procedimientos, juicios y decisiones serán convalidados por las autoridades jurisdiccionales del Estado (Art. 4°).

- Derechos para elegir: a sus autoridades y ejercer sus formas de gobierno interno de acuerdo a sus normas en los ámbitos de su autonomía (Art. 4°). **Límite:** garantizando la participación de las mujeres en condiciones de equidad (Art. 4°) y garantizando la unidad del Estado nacional (Art. 115).

- Derechos para acceder: de manera colectiva al uso y disfrute de los recursos naturales de sus tierras y territorios, entendidos éstos como la totalidad del hábitat que los pueblos indígenas usan u ocupan (Art. 4°).
  Límite: salvo aquéllos cuyo dominio directo corresponde a la Nación (Art. 4°).

Pese a todos los condicionamientos que sufre la vigencia de los "derechos autonómicos", es evidente que es un paso hacia adelante. Sin embargo, hay muchos desafíos en el camino que oscurecen el escenario. Existe el temor de que una vez alcanzada la reforma constitucional, quede como letra muerta. En el pasado así ha sucedido. La Constitución mexicana se reformó en el año 1991 e incorporó en su artículo 4° el reconocimiento de derechos indígenas. Esta reforma nunca se aplicó porque los diputados jamás se ocuparon de su reglamentación. Lo mismo puede decirse del Convenio 169 de la OIT, que habiendo sido México el segundo país que se adhirió a esa norma internacional, tampoco fue asumida con seriedad, ni por el poder ejecutivo y menos aún por el legislativo. Incluso algunos juristas han insinuado que siendo los derechos indígenas "inconstitucionales" éstos podrían ser apelados en los tribunales y anulados

Así son las cosas después de la marcha zapatista; el ambiente quedó muy sensible a la posibilidad de un escenario que conduzca al diálogo y a la firma de la paz en un mediano plazo. Esta es una expectativa aparentemente posible, los zapatistas han reiterado su voluntad sobre la necesidad de llegar ya a la paz. En este escenario queda, sin embargo, la duda sobre cuál será el futuro de los derechos indígenas una vez que los indígenas chiapanecos vuelvan al "estado de derecho".

Notas

[1] Su postura fue hecha públicamente en un artículo publicado en *La Jornada*, de fecha 19 de mayo de 2000.

[2] Los casi cien zapatistas presos en todo el país se han ido liberando poco a poco; y para el 2 de enero de 2001 ya se habían retirado 53 retenes militares en la entidad chiapaneca.

[3] La inconformidad zapatista quedó plasmada en el documento "Punto y seguido".

GUATEMALA

El siglo pasado fue escenario de múltiples acontecimientos relacionados con la reivindicación de los pueblos indígenas del mundo y sobre todo en Guatemala (Campaña Continental de Resistencia Indígena, Negra y Popular; Premio Nobel de la Paz a Rigoberta Menchú; la firma del Acuerdo Sobre Identidad y Derechos de los Pueblos Indígenas en el marco del proceso de paz; la ratificación del Convenio 169 de la OIT, etcétera.) Estos acontecimientos ayudaron a darle vida al movimiento maya como representante del pueblo *maya*. Actualmente se está experimentando una etapa de retroceso o estancamiento debido a la falta de coherencia que existe entre los dirigentes, porque muchas veces éstos no responden a las necesidades de las comunidades rurales y centralizan su trabajo en la ciudad; además, porque carecen de un proyecto político-ideológico bien definido.

La situación merece un análisis crítico y profundo y para poder realizarlo, es importante hacerlo por niveles, tomando en cuenta que las demandas del pueblo maya no están relacionadas con el reciente conflicto armado , sino que tienen su origen en el tiempo de la invasión y colonización española.

En lo político

Cabe recordar que el año 2000 lo iniciamos con un nuevo gobierno. Asumió el poder el Frente Republicano Guatemala (FRG)[1], el cual postuló como Presidente a Alfonso Portillo, una persona contradictoria tanto por sus declaraciones como por su inclinación política.

Por primera vez la Unidad Revolucionaria Nacional Guatemalteca (URNG) participó en contiendas electorales y, aliada a otras fuerzas de izquierda, en el Congreso con ocho diputados. Ahora quedan pocos ya que el anterior candidato de la izquierda, licenciado Alvaro Colom, quien siempre flirteó con la derecha, ahora fundó un nuevo partido denominado Unión Nacional de la Esperanza (UNE), al cual ahora se le han sumado diputados del antiguo PAN[2] y de la ANN[3].

Es importante resaltar que durante el proceso electoralparticiparon muchos dirigentes indígenas de diferentes organizaciones del movimiento social. Si bien es cierto que era la primera vez que llegaba al congreso una cantidad considerable de mayas, aunque a través de diferentes partidos y sobre todo del FRG, la participación de algunos dirigentes en los partidos políticos, en vez de fortalecer el proceso del movimiento maya, lo ha estancado puesto que se ha perdido de vista la razón de ser de las organizaciones y se las ha confundido con las actividades proselitistas de los partidos.

Actualmente, algunas agrupaciones mayas se están esforzando para constituir partidos políticos. Nacen dela experiencia de algunos comités

Niños mayas, Guatemala. Foto: Anette Molbech

Foto: archivo de IWGIA

cívicos, como el caso del Xelju'[4] en Quetzaltenango. Otro ejemplo es la Asociación Política de Mujeres Mayas integrada, entre otras, por la Premio Nobel de la Paz Rigoberta Menchú, las ex-diputadas Rosalina Tuyúc y Manuela Alvarado, la Ministra de Cultura,Otilia Lux de Cotí y la dirigente campesina María Toj. El principal propósito de la Asociación es apoyar las iniciativas de cualquier mujer indígena que busque participar en política.

Es cierto que estos proyectos políticos pueden ser buenos, pero lamentablemente se están fundamentando sobre la base de ciertos personalismos. Este fue el mismo sistema utilizado por la izquierda o por la derecha para organizar a las comunidades indígenas, al crear ciertas figuras que en vez de fortalecer al movimiento finalmente lo han fraccionado.

En lo económico

El proceso de globalización impulsado desde los Estados Unidos, Europa y Japón ha provocado mayor empobrecimiento en las comunidades indígenas. La sobreexplotación que sufren las familias mayas en las fincas y el nivel de desempleo y subempleo que se vive en la ciudad es un factor importante para medir el nivel de vida y la pobreza.

El concepto de desarrollo rural que tiene el gobierno y muchas veces las ONGs, es lo que se traduce en infraestructura (puentes, carreteras, centros de salud, mercados, etcétera), pero el concepto de desarrollo humano integral no se atiende, puesto que ello implica un cambio de estructura y actitudes, y una nueva relación entre lo rural y lo urbano.

En el proceso de paz, se firmó el Acuerdo Sobre Aspectos Socioeconómicos y Situación Agraria. Desde hace muchos años la anterior URNG mantuvo su lucha por el acceso a la tierra, por ser éste el eje del desarrollo de las comunidades indígenas. Pero lamentablemente, en el Acuerdo, si bien es cierto que se reconoció el concepto filosófico que tienen las comunidades indígenas sobre la tierra, no se urgió a la reestructuración de la tenencia de la tierra iniciando el proceso de un nuevo catastro de tierras. Es decir, no se tocó el problema de una reforma agraria.

Se creó el Fondo para la Tierra y las organizaciones campesinas se aglutinaron en la Coordinadora Nacional de Organizaciones Campesinas, CNOC[5]. La lucha por la tierra ha sido siempre la consecuencia de una situación de injustícia para los campesinos. En este caso el Fondo de Tierra, en vez de resolverles los problemas se los complica. Uno de los problemas es que el gobierno compra las fincas a quienes por muchos años se han enriquecido con los recursos de las comunidades. Otro problema es que para tener acceso a esta tierra los campesinos tienen que comprarla y con el nivel económico actual, cada vez se encuentran más pobres. Si bien es cierto que no se puede regalar nada en estos tiempos, tampoco vender la tierra a sus legítimos dueños es una buena salida para proveer de recursos a los campesinos.

Como consecuencia de esta situación económica y social de las comunidades, se puede notar la migración de familias indígenas y campesinas a los Estados Unidos y México y sumado a esto el desarrollo de la prostitución entre las mujeres indígenas.

En lo social

Guatemala es parte firmante de la Declaración sobre la Discriminación contra la Mujer, ha ratificado el Convenio 169 de la OIT y tiene en su haber un Acuerdo Sobre Identidad y Derechos de los Pueblos Indígenas, firmado en el proceso de paz. Esto no quiere decir que la discriminación contra los pueblos indígenas haya disminuido, esto es un mal estructural arraigado en las entrañas mismas del Estado.

Si bien es cierto que entre la dirigencia del movimiento maya existe un gran número de mujeres, éstas siempre siguen siendo asesoradas por hombres o los hombres son quienes deciden. En las comunidades, la mujer también tiene muchas desventajas en relación con el hombre. El proceso de militarización que han sufrido las comunidades indígenas contribuyó a aumentar el machismo y las diferencias de género. El concepto de complementariedad de la vida, que según la cosmovisión maya es uno de los principios del matrimonio entre los mayas, hoy en día es una utopía, puesto que últimamente se ha experimentado un alto nivel de desintegración familiar, con todos los problemas que sufre una comunidad desintegrada (pandillas juveniles, drogadicción y mendicidad).

En lo educativo

En el Acuerdo Sobre Identidad y Derechos de los Pueblos Indígenas, se habla claramente de una educación acorde a la realidad multicultural y multilingüe del país y se clama por una Reforma Educativa.

De esa manera se formó en el seno de la Coordinadora de Organizaciones Mayas de Guatemala (COPMAGUA)[6], una Comisión Consultiva de Reforma Educativa. Todas las organizaciones de la sociedad civil y en particular las organizaciones mayas, hicieron su aporte, tanto las organizaciones de la población desarraigada, aglutinadas en la Asamblea Consultiva de Población Desarraigada (ACPD)[7] como el grueso número de organizaciones mayas (populares, de desarrollo, académicos, de mujeres). El resultado fue el Plan de Refórma Educativa.

El gobierno de Portillo ha tomado muy poco en cuenta este Plan. Con la designación del Dr. Demetrio Cojti al puesto de Viceministro de Educación y la Lda. Otilia Lux como Ministra de Cultura – el primero, miembro de la Comisión Consultiva de Reforma Educativa y la segunda, miembro de la Comisión sobre Esclarecimiento Histórico y ambos indígenas - muchos creyeron que los temas referentes a los mayas iban a ser encarados rápido. Al contrario, se ha producido un estancamiento y en materia de educación se ha avanzado muy poco. El gobierno sólo ha proyectado paliativos, como el caso de la última campaña de Alfabetización, que ha creado polémica en todos los sectores puesto que nunca se consultó a los sectores de la sociedad civil y que para las organizaciones mayas sigue siendo un proyecto de castellanización, como todos los programas que han sido impulsados por el Ministerio de Educación.

Sin embargo, es un avance que algunas organizaciones mayas han constituido Escuelas Mayas, aunque son esfuerzos aislados. La Universidad Maya es una utopía, un sueño y puede ser un recurso que el Estado puede utilizar para tranquilizar las conciencias de muchos.

En lo religioso

En este nivel hay un gran desarrollo y fortalecimiento de la espiritualidad maya. Mientras los grupos cristianos (católicos y protestantes) tienen problemas entre ellos y dividen las comunidades, al mismo tiempo que pierden terreno, la espiritualidad maya cada vez se extiende más. Esta forma de ver a la divinidad y a todo su entorno ha permitido que los mayas recobren su identidad.

Uno de los problemas es que por apresurarse mucho pareciera que se está cayendo en la misma metodología que utilizan los grupos cristianos para hacerse de adeptos. Es decir, que hay mucha posibilidad de que se caiga en un fundamentalismo maya y esto puede llegar a que se distorsione el papel de la espiritualidad. Otro de los problemas es que algunas organizaciones han estado utilizando la ceremonia maya y a los sacerdotes mayas como un medio para agenciarse recursos económicos.

En resumen

Si bien es cierto que se había avanzado mucho, hoy se experimenta un retroceso o estancamiento. Esto merece un análisis de la realidad del movimiento maya y su relación con el pueblo maya. De igual forma es urgente un Plan Estratégico del movimiento para que no exista más cooptación y tampoco pérdida de dirigentes que pueden dar mucho más. Por todo lo expresado anteriormente, se necesita con urgencia la conformación y el fortalecimiento de una intelectualidad maya, la cual es prácticamente inexistente, puesto que quienes la integran ahora son meramente académicos, muy poco creativos y que presentan pocas propuestas.

Notas

[1] El FRG fue fundado por el General Efraín Ríos Mont, un general que ha combinado la política con la religión protestante-fundamentalista. Actualmente es el Presidente del Congreso de la República; fue el causante de las grandes masacres ocurridas durante el Conflicto Armado Guatemalteco.

[2] El Plan de Avanzada Nacional (PAN), es el partido del anterior gobierno. De esta opción política han aparecido los unionistas y los panistas.

[3] La Alianza Nueva Nación (ANN), es la alianza de opciones políticas encabezadas por el URNG, DIA y UNID, que formaron la izquierda en la anterior contienda electoral.

[4] Es el comité cívico más antiguo de Quetzaltenango. Su historia empieza a finales de 1972.

[5] La CNOC está formada por varias organizaciones campesinas que luchan por la tierra, entre ellas: el Comité de Unidad Campesina (CUC), el Concejo Campesino Kabawil, la Coordinadora Nacional Indígena y Campesina (CONIC), etcétera.

[6] COPMAGUA fue conformada en sus inicios por el Consejo de Organizaciones Mayas de Guatemala (COMG), la Academia de las Lenguas Mayas de Guatemala (ALMG), la Instancia de Unidad y Consenso Mayas (IUCM), la Unión de Pueblos Mayas de Guatemala (UPMAG) y el Movimiento Tukum Umam. Después de una lucha interna y debido a los personalismos y problemas interinstitucionales, las dos primeras se retiraron, quedando las tres últimas, aunque acompañadas de otras.

[7] La ACPD, formada por el CERJ, CONAVIGUA, CPRs, GAM, CUC.

NICARAGUA

Los conflictos por la tenencia de tierras y la lucha contra la exclusión marcaron durante el 2000 la geografía y la vida de los pueblos indígenas y las comunidades étnicas que habitan la Costa Caribe de Nicaragua. Aunque el derecho a la tierra es ampliamente reconocido por las leyes de la República de Nicaragua, no existen mecanismos para la demarcación y titulación a favor de los pueblos indígenas y las comunidades étnicas.

La lección aprendida en la Costa Caribe de Nicaragua es que se puede avanzar en unidad cuando se unen los intereses de la mayoría.

Defensa de los territorios indígenas

En octubre de 1998, la Presidencia de la República presentó un anteproyecto de Ley de Demarcación, que fue discutido con las diferentes comunidades y territorios donde viven los pueblos indígenas y comunidades étnicas del país.

Los Consejos Regionales Autónomos - gobiernos regionales en el litoral caribeño - aprobaron este anteproyecto legislativo como resultado de un proceso de consultas que fue posible gracias a la conjugación de esfuerzos de mujeres y hombres de las comunidades, sus líderes, iglesias, universidades, municipalidades, Consejos Regionales Autónomos y diputados nacionales; con el apoyo financiero y logístico de organismos gubernamentales y no-gubernamentales.

Después de dos años, finalmente el 6 de septiembre del año 2000 los Consejos Regionales Autónomos de las Regiones Autónomas Atlántico Norte y Sur, presentaron ante la Asamblea Nacional, el nuevo *Anteproyecto de Ley de Régimen de la Propiedad Comunal de los Pueblos Indígenas y Comunidades Étnicas de la Costa Atlántica de los Ríos Bocay, Coco e Indio Maíz.*

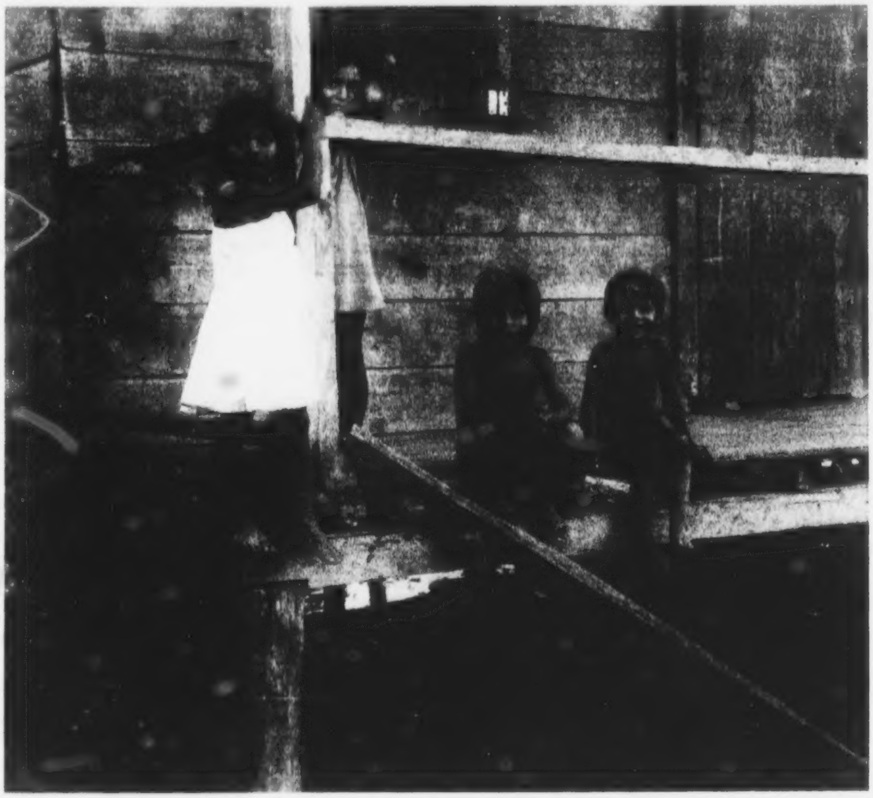
Algunos antecedentes

La demarcación y la titulación de las tierras han sido demandas históricas principales de los pueblos indígenas y las comunidades étnicas del Atlántico de la Costa Caribe de Nicaragua y se han mantenido como compromisos ineludibles en los diferentes períodos del Estado. Esto se refleja en:

- El Tratado de Managua, de 1860.
- El Tratado Harrison-Altamirano, de 1905.
- La Comisión Tituladora de la Mosquitia, de 1905.
- Leyes Agrarias de 1963 y 1981.
- La Constitución Política de 1986.
- El Estatuto de Autonomía aprobado en 1987.
- La Reforma Constitucional de 1995.

Los artículos 5, 89, 107 y 180 establecen un claro reconocimiento de la propiedad comunal de los pueblos indígenas sobre sus territorios. El artículo 89 dice claramente: *"El estado reconoce de manera particular las formas de propiedad comunales de las tierras de los Pueblos Indígenas en todo lo que atañe el derecho de propiedad sobre sus tierras".*

La presentación del *Anteproyecto de Ley de Régimen de la Propiedad Comunal* responde a la necesidad de un instrumento legal que, de manera específica, regule la delimitación y titulación de las tierras de los pueblos indígenas y comunidades étnicas para la efectiva aplicación de los derechos.



Niños miskito, Alamikamba, RAAN. Foto: Diana Vinding

La situación actual

Mientras algunas comunidades indígenas gozan de títulos reales de propiedad, legalmente inscritos, la mayoría de las comunidades carecen de títulos; se las reconocen como dueñas de sus territorios pero los linderos no han sido definidos.

Empresarios y compañías diversas explotan vorazmente los recursos pesqueros, mineros, madereros y la biodiversidad de estos territorios, y a muchos de ellos no les interesa que se resuelva el problema de la propiedad de los territorios indígenas.

Campesinos pobres de otras regiones del país ven en las tierras "prometedoras y ociosas" de los indígenas nuevas oportunidades para sobrevivir. La pregunta que surge continuamente es: ¿por qué tan poca gente reclama tanto territorio?

Presentamos una muestra de cómo se manifestaron estos conflictos en el año 2000. Son conflictos no resueltos, como el reclamo por una ley justa que establezca mecanismos claros para el reconocimiento del patrimonio ancestral de los pueblos indígenas sobre sus tierras y sus aguas, elementos vitales para conservar sus culturas, lenguas, religiones y formas de vida.

Prinzapolka: "gringos" contra indígenas

Se perdió la calma característica de las llanuras que flanquean el río Prinzapolka, porque sus pobladores no permitieron que cuatro ciudadanos estadounidenses vinculados a empresarios madereros los despojaran de las tierras que han sido pobladas por el pueblo *miskito*.

Richard Clearence, Joseph Patten, Robert Burrinson y Paul Stauder Morales son cuatro "gringos" que reabrieron un juicio contra nueve comunidades indígenas acusándolas de usurpar propiedades y falsificar documentos legales para obtener más de 58 mil hectáreas de terreno tropical húmedo, en las zonas que rodean al río Prinzapolka en la Región Autónoma del Atlántico Norte (RAAN).

Este conflicto, mejor conocido como el "Caso Prinzapolka", fue presentado por los "gringos" ya dos veces en los juzgados de Puerto Cabezas, y en las dos ocasiones han salido favorecidas las comunidades por habitar en esas tierras desde hace más de cien años.

Sin embargo, los abogados de los "gringos" lograron que el año pasado un nuevo juez aceptara una nueva apelación, que está acompañada a la vez de causas penales en contra de los indígenas y el caso se ha reabierto.

"No entiendo cómo alguien que no es de este país tiene el derecho de decir que los indígenas están invadiendo terreno privado, cuando son ellos los que vienen aquí a comprar tierras comunales sagradas para los indígenas que pertenecen a las comunidades por Ley de Autonomía. Nicaragua no le pertenece a los norteamericanos y eso hay que dejarlo claro", señalo el reverendo moravo Norman Bent, presidente del Comité Costeño.

Bent dijo que el Comité Costeño lleva varios años trabajando en la situación de las propiedades comunales de la Costa Atlántica y que en el caso Prinzapolka han solicitado al gobierno que cancele cualquier tipo de arreglo de arrendamiento que se haya dado entre algunos síndicos comunales y los norteamericanos, porque hay contratos firmados por organizaciones que ya no existen.

Las propiedades en conflicto, según expertos, fueron adquiridas por un ciudadano norteamericano en 1909. Con el paso del tiempo dichos terrenos se fueron vendiendo y heredando, lo cual explica que los reclamantes ahora sean cuatro.

Perder 58 mil hectáreas de territorio significa para los indígenas quedarse sin tierras para sembrar una mata de banano, yuca o malanga, sin acceso al río y sus recursos naturales, sería condenarlos a morir de hambre.

El Caso Prinzapolka fue denunciado a finales del año pasado en foros internacionales realizados en Ginebra, hasta donde viajó una comisión de líderes comunitarios con ayuda de la Oficina de Promoción Humanitaria y Desarrollo de la Costa Atlántica (OPHDESCA).

Cayos Perlas: Una disputa pendiente

Líderes de las comunidades de Laguna de Perlas, Corn Island, Bluefields y Rama Kay aún esperan el fallo del Juzgado de Distrito de lo Civil de Bluefields sobre la demanda de nulidad de la venta de los siete cayos al griego Peter Tsokos, quien ahora pretende revender - a través de Internet - esa porción de territorio comunal.

El conflicto se originó hace cinco años, cuando el griego "compró" a la familia Hooker Jackson siete cayos por la suma de C$ 60,000.

Hace varios años, la familia Hooker Jackson adquirió los cayos como pago de una deuda que tenía con ellos el padre de Amos Briton Archibold, supuesto dueño de los mismos.

Sin embargo, en el escrito interpuesto a finales de octubre del 2000, los líderes comunales y directivos regionales señalan: *"Todo indica que los Hooker Jackson lograron la sentencia de venta forzosa sin presentar títulos que acreditaban el derecho de dominio del doctor Amos Briton Archibold sobre los referidos islotes o cayos. Como no era dueño, no poseía título de dominio. De ser así, la venta forzosa se hizo sin probar dominio y con graves violaciones de ley"*.

Según Tsokos la transacción fue perfectamente legal. Él "compró" siete de los 18 islotes: Claw Cay, Baboon, While Kale, Waters, Vincent, Great Kay y Link Kay a las familias Kirkland, Taylor, Hooker y Jackson, quienes supuestamente poseían títulos de propiedad desde hace más de un siglo. Pero la compra de Tsokos choca con el artículo 10 de la Constitución Política de Nicaragua, el que deja claro que territorios como los Cayos Perlas pertenecen al Estado.

Alejandro Mejía Gaitán, presidente de la Junta Directiva del Consejo Regional Autónomo del Atlántico Sur, dijo que está seguro que los Cayos Perlas pertenecen a los comunitarios de la Cuenca de Laguna de Perlas, por eso dicha autoridad regional los apoya totalmente en sus reclamos para que les regresen lo que históricamente les ha pertenecido.

Los miembros del Consejo Regional Autónomo y líderes de las diferentes comunidades indígenas solicitaron que sea declarada la anulación de la venta forzada de los siete cayos, porque "la cosa ajena no puede venderse", y se cancelen las correspondientes inscripciones registrales.

Monkey Point contra el gigante CINN

Los pobladores de Monkey Point se mantienen firmes en su lucha contra los impulsores del Canal Interoceánico de Nicaragua (CINN), quienes pretenden construir en su bahía un puerto para manejo de carga.

El 3 de noviembre de 2000, las comunidades indígenas de Monkey Point y El Rama presentaron un Recurso de Amparo contra la construcción del canal seco ante la Corte Suprema de Justicia y solicitaron a la Asamblea Nacional una audiencia para explicar las razones por las cuales sería perjudicial para la población y el medio ambiente de la zona la construcción de un puerto y el arribo de barcos de gran calado.

Las comunidades alegan que las acciones y omisiones señaladas y reclamadas en el Recurso de Amparo presuntamente constituyen violaciones a los artículos 5, 46, 89, 90, 91 y 180 de la Constitución Política de Nicaragua, los que en su conjunto garantizan los derechos de propiedad y de uso de las comunidades indígenas y étnicas de la Costa Atlántica sobre sus tierras, así como también garantizan el derecho a la integridad y supervivencia cultural de estos pueblos. Las comunidades alegan, además, que el contrato de concesión, según está redactado y negociado por el Gobierno de Nicaragua, también viola los artículos constitucionales 60, 102, 128, 129, 177 y 181.

En la Asamblea Nacional, por el momento, está pendiente la aprobación del anteproyecto denominado Contrato de Concesión para el Estudio de Factibilidad, Diseño Final, Construcción y Operación del Proyecto Canal Interoceánico de Nicaragua (CINN).

Sin embargo, el temor de los indígenas persiste. Ellos consideran que la infraestructura del CINN dividiría y aislaría las tierras que tradicionalmente han ocupado las comunidades indígenas.

El reclamo de los indígenas llegó en mayo a la Comisión Interamericana de Derechos Humanos (CIDH) de la Organización de Estados Americanos (OEA), instancia que interpeló al Gobierno de Nicaragua, el cual aún no responde.

Los indígenas son respaldados por un grupo de apoyo formado por la Coordinadora de ONGs de la RAAS, el Centro Alexander von Humboldt y el Grupo Jurídico Internacional de Derechos Humanos.

Awas Tingni ante CIDH

La comunidad *mayangna* de Awas Tingni, Región Autónoma Atlántico Norte, solicitó a la Corte Interamericana de Derechos Humanos que exija al Gobierno de Nicaragua la demarcación y titulación de las tierras comunales ancestrales.

La Corte y la Comisión Interamericana son parte del Sistema Interamericano de Protección de los Derechos Humanos, creado para vigilar el respeto a los derechos humanos protegidos por la Convención Americana. Los Estados, como Nicaragua, signatarios de la Convención y miembros de la OEA, están bajo la jurisdicción de la Corte, por lo que la sentencia en este caso, esperada durante el año 2001, es de obligatorio cumplimiento para el gobierno de Nicaragua.

Los mayangnas reclaman protección estatal y respeto a sus derechos sobre las tierras que, sin consultar con la comunidad, el Ministerio del Ambiente y Recursos Naturales (MARENA), concedió a la empresa coreana Sol del Caribe, S. A. (Solcarsa) constituidas por 62,000 hectáreas de bosque para explotación maderera durante los siguientes treinta años.

Tras el reclamo de los indígenas, en 1997 la Corte Suprema de Justicia declaró inconstitucional la concesión, razón por la cual la misma fue cancelada en 1998, pero el caso ya estaba en manos de la sede de la CIDH en Washington, D.C., organismo que procuró por más de dos años que el Gobierno de Nicaragua y la Comunidad de Awas Tingni conciliaran posiciones; sin embargo esto no fue posible.

La Corte continuó el caso, realizando en noviembre pasado la primera audiencia. Durante la audiencia de fondo la Comunidad Mayangna de Awas Tingni presentó ante la Corte Interamericana más de una decena de testimonios de autoridades tradicionales comunales, testigos, peritos y expertos de la talla del Dr. Galio Gurdián, la Dra. Lottie Cunningham, el Dr. Charles Hale, el Dr. Roque Roldán y el Dr. Rodolfo Stavenhagen.

La sentencia en el caso de la Comunidad Mayangna de Awas Tingni creará un antecedente muy importante, no sólo a nivel nacional para todos los pueblos indígenas de la Costa Atlántica de Nicaragua (*miskitos, ramas* y *mayangnas* o *sumus*), sino también para la comunidad internacional, porque Awas Tingni exige que el gobierno de Nicaragua reconozca en la práctica sus derechos sobre sus tierras comunales, que cese de otorgar concesiones sobre los recursos naturales en sus tierras comunales y que repare los daños económicos y morales sufridos por la Comunidad ante las acciones y omisiones gubernamentales sobre sus derechos de propiedad.

Las perspectivas

Aún cuando el Anteproyecto de Ley fue presentado hace más de seis meses, todavía no ha sido aprobado, pese a que los principales conflictos que enfrentan los pueblos indígenas y comunidades étnicas están estrechamente vinculados al problema de la propiedad de sus tierras.

En el último período del año 2000 fue difícil gestionar la discusión y aprobación del Anteproyecto de Ley, ya que el escenario político nacional estaba concentrado en las elecciones municipales. Este año la situación no cambia mucho, nuevamente tenemos elecciones nacionales, esta vez para la Presidencia y la Asamblea Nacional. Se debate sobre el "mérito" de los ahora candidatos, no se discuten programas de gobierno, y cuando se mencionan planes, los pueblos indígenas y las comunidades étnicas no aparecen.

En el área de la Reserva de Biosfera de BOSAWAS, los indígenas miskitos y mayangnas desarrollaron su propio proceso de autodemarcación y recientemente entraron a un acuerdo de implementación gradual con el Instituto Nicaragüense de Estudios Territoriales (INETER) que pueden ser ejemplos para otros territorios. Mientras se espera la ley, otras voces demandan el reconocimiento de los acuerdos históricos cuya vigencia no ha caducado.

COSTA RICA

En Costa Rica habitamos 39.264 indígenas, distribuidos en 23 territorios[1], cuya extensión total alcanza la suma de 324.829,29 hectáreas. Somos ocho pueblos indígenas claramente establecidos, a saber: *bruncas, bribris, cabécares, guaymíes, malekus, huetares, chorotegas* y *teribes*.

A pesar que porcentualmente significamos el uno por ciento de la población costarricense (3,8 millones), se ha obtenido importantes logros, que obedecen más al esfuerzo particular de los pueblos y comunidades a través de sus organizaciones propias que a políticas estatales.

Relaciones Estado - Pueblos Indígenas[2]

Los pueblos indígenas no cuentan con un ente coordinador del sector público que dirija y oriente técnicamente las líneas de acción conjuntas dirigidas hacia los pueblos indígenas.

La Comisión Nacional de Asuntos Indígenas (CONAI) -organización gubernamental-, no ha cumplido con el objetivo primordial de su creación, el cual es servir de coordinadora de estrategias de los programas y defensa de los intereses de las comunidades indígenas. Lo que es más grave, esta entidad se ha convertido en un mecanismo político de poder y división de las poblaciones indígenas, situación que es palpable en casi todas las comunidades indígenas del país, dejando de lado muchas veces las demandas directas de los habitantes indígenas.

Esto ha provocado que se tenga que recurrir directamente a las distintas Asociaciones, Juntas de Vecinos, Comisiones de Mujeres y Organizaciones Civiles diversas, para conocer las necesidades, opiniones y resoluciones indígenas dentro de la vida nacional del país.

La ausencia de control y el vacío jerárquico han hecho que a esta institución se le endilguen actuaciones que son motivo de críticas y denuncias por parte de los habitantes indígenas, dentro de un ambiente de desautorización civil por parte de las propias comunidades.

Plan Nacional de Desarrollo Indígena

En el año 2000, los pobladores indígenas consensuaron su propio Plan Nacional de Desarrollo Indígena, encaminado a brindar los lineamientos generales sobre quién, cómo, dónde y cuándo se implementarían los programas de desarrollo en las comunidades; sin embargo, paralelamente a esta iniciativa, el Estado costarricense, a través del Programa de Desarrollo Rural (PDR), realizaba un ejercicio similar, arrojando como resultado otro "Plan Gubernamental", asignándole recursos económicos por poco más de US$ 100 millones. El gobierno aprovechó la fecha del 12 de octubre 2000 para publicitar su "plan" y calmar las voces indígenas. Como todos podemos imaginar, la asignación del rubro económico fue una farsa; el plan no tiene un sólo centavo y más bien frenó todo el proceso de negociación que las organizaciones indígenas mantenían con diferentes fuentes financieras.

Mientras tanto, las comunidades indígenas cada día se sumen más en la pobreza.

Medio ambiente

Comunidades indígenas y grupos ecologistas presentaron en enero de 2000, un recurso de amparo contra las concesiones de exploración petrolera, cedidas según la resolución R-702-98 del Ministerio del Ambiente y Energía (MINAE), a la empresa MKJ XPLORATION INC; ya que "nunca se produjo un proceso de consulta popular dirigido a las comunidades del caribe costarricense, que evidentemente se verían afectadas por estas actividades".

En el recurso se reclamaba el respeto a los compromisos adquiridos en los acuerdos y convenios internacionales, sobre todo con relación al respeto y consulta a las comunidades indígenas.

Aunque inicialmente las exploraciones se detuvieron, tiempo después se permitió reanudarlas, siempre y cuando no sea dentro de territorios indígenas. Desde junio de 2000, en la región sur del país, concretamente en el territorio indígena de Rey Curré, un grupo de mujeres indígenas ha tomado la decisión de enfrentar abiertamente los avances del Proyecto Hidroeléctrico de Boruca, un megaproyecto promovido por el Instituto Costarricense de Electricidad (ICE), con un costo cercano a los US$ 3.000 millones. El mismo inundaría por completo su territorio, parcialmente a Boruca y Térraba, e indirectamente a otros tres, pues se creará un lago de un tamaño de alrededor de 250 kilómetros cuadrados.

Aunque los trabajos preliminares de construcción continúan, el diálogo entre la comunidad y la Dirección Ejecutiva del Proyecto ha sido interrumpido desde el pasado 18 de enero de 2001; pero la concientización generada en diversos sectores de la sociedad y organizaciones ambientalistas presagia una intensa lucha de oposición donde prevalecerá el cumplimiento de la legislación indígena existente (Ley Indígena 7172, Convenio 169 o Ley 7316, entre otros).

Complementando este último tema, se han realizado constantes solicitudes al Instituto de Desarrollo Agrario (IDA), para que traspase los derechos territoriales de Rey Curré, Boruca y Térraba a sus organizaciones legalmente representativas. Estratégicamente, el IDA no quiere otorgarles ese derecho, pues daría a estos pueblos mayores herramientas de lucha contra la Hidroeléctrica.

Mujer indígena

Al igual que sucede en muchos otros países del mundo, la mujer indígena sufre una doble discriminación; primero por su condición de mujer y segundo, por su condición de indígena.

No se percibe en el corto plazo una participación más activa y amplia de la mujer indígena en su autodesarrollo, ni en el engranaje del movimiento nacional. La apertura que las organizaciones muestran, al incorporar a la mujer entre sus afiliados o a sus Juntas Directivas, obedece más a exigencias de los cooperantes internacionales, que a un convencimiento o cambio de actitud masculino.

Los esfuerzos aislados que realizan grupos de mujeres en el caribe y la zona sur del país -principalmente-, son muy valiosos y merecen ser valorados en su justa dimensión, pues demuestran el aporte en pequeña escala que pueden realizar al desarrollo indígena nacional. Considero que están sembrando semillas que a mediano plazo, cuando germinen y sus ramas se encuentren con la semilla sembrada al otro lado de la cordillera, serán una fuerza capaz de dar el golpe de timón necesario para eliminar la dependencia y el paternalismo y, ante todo, el conformismo en que está sumido gran parte de los pueblos y permitirá que avancemos hacia el **desarrollo con identidad** de nuestros pueblos indígenas.

El territorio indígena de Rey Curré y el futuro emplazamiento de la represa de Boruca. Foto: CEDIN

Conclusión

No podemos afirmar que en los últimos años las poblaciones indígenas hayan obtenido logros significativos que beneficien a las amplias mayorías. A pesar de ello, cuando analizamos las iniciativas de proyecciones regionales y locales en el país, nos encontramos con lo mencionado al inicio de este artículo; las comunidades han obtenido logros con índices de objetivos verificables gracias al esfuerzo particular de sus organizaciones de base, las cuales han construido desde pequeños puentes hasta centros escolares; desde pequeños proyectos de subsistencia hasta centros de comercialización autosuficientes, desde proyectos de agricultura tradicional, hasta cultivos plataneros capaces de abastecer el 75% del mercado nacional, todos generadores de cambios en el desarrollo de sus respectivas comunidades.

Si sumamos todos estos "avances aislados", concluimos que el movimiento indígena costarricense ha tenido logros realmente sorprendentes. Esto se ha obtenido mediante una relación mucho más directa entre las organizaciones locales con los donantes internacionales y, en menor medida, a las relaciones interinstitucionales con dependencias gubernamentales regionales o subregionales. Algunas, no todas, se han esforzado por cooperar con el desarrollo indígena, pero al no responder a políticas gubernamentales, sus esfuerzos solapados son escasos.

Respondiendo a las grandes amenazas como la Hidroeléctrica, el Plan de Desarrollo Gubernamental y otros, durante los primeros meses del año 2001 las poblaciones indígenas están entrando en una efervescencia que les augura resultados halagadores.

Aunque el movimiento indígena costarricense como un todo no ha tenido una constancia en su accionar, es evidente que la madurez de sus organizaciones de base le está haciendo comprender la urgente necesidad de consolidar y fortalecer estructuras nacionales, capaces de mantener una línea de negociación, de vigilancia, de presión y de lucha constante, que evidencien ante el Estado y la sociedad en general una cohesión de nuestro movimiento.

Dialogando con un amigo indígena, analizamos el estado actual del movimiento indígena, en el que la mayoría de las organizaciones nacen, crecen y se autoeliminan con una rapidez asombrosa, poniendo en peligro la cooperación externa e interna; él me dijo "en realidad, lo que yo creo, es que los que han caído y desaparecido son líderes indígenas; pero el verdadero movimiento indígena, con la participación de las grandes mayorías, apenas está empezando".

Después de mucho pensarlo, le doy toda la razón.

Notas

1 Uno de ellos, Altos de San Antonio -de origen guaymí-, no está legalmente establecido.

2 Transcripción del Informe del año 2000 de la Defensoría de los Habitantes, en su capítulo sobre pueblos indígenas, que es compatible con la percepción mayoritaria de las comunidades originarias.

PANAMÁ

Consideraciones generales

Los pueblos indígenas de Panamá siguen llevando a cuestas sus problemas a comienzos del nuevo milenio, frustrados muchas veces con los cantos electoreros, pero en términos generales también activos en sus reclamaciones. No solamente están negociando con el Ejecutivo del gobierno sino también con la Asamblea Legislativa donde se hacen leyes a nivel nacional y donde la Comisión de Asuntos Indígenas está jugando un papel destacado. Hasta ahora, se han reconocido de manera legal cinco (5) territorios indígenas (Comarca Kuna Yala, Comarca Emberá Waunan, Comarca Kuna de

Madungandi, Comarca Ngobe-Bugle y desde junio de 2000 Comarca Kuna de Wargandi), lo cual hace que otros pueblos que todavía no tienen esa legalidad exijan también su reconocimiento. Entre esas comunidades tenemos a los *kunas* que habitan en la frontera de Colombia (Pucuro y Paya o la Comarca de Takargunyala), los *nasos* y los *bri-bris* en la frontera con Costa Rica.

La creación del Consejo Nacional de Desarrollo Indígena, en enero de 2000 (CNDI, ver *El Mundo Indígena* de IWGIA 1999-2000), dependiente de la Presidencia de la República, despertó ciertas expectativas pero al momento de juramentarse cayó como balde de agua fría sobre la dirigencia indígena, ya que al frente del mismo se nombraron a elementos políticos del partido en el poder que nada o muy poco tenían que tratar con las comunidades interesadas. A un año de haberse constituido no ha podido reunirse porque se involucró a ministros y altos personeros de instituciones autónomas y universidades, que tampoco se han interesado en enviar a sus representantes. Mientras tanto, los asuntos indígenas siguen tratándose de manera tradicional desde el Ministerio de Gobierno y Justicia, aunque esta vez con mayor acercamiento hacia las autoridades tradicionales.

Otra de las discusiones de mayor impacto ha sido la implementación de proyectos o políticas ambientales en distintas regiones indígenas del país, proyectos que vienen en su mayoría del Banco Interamericano de Desarrollo y del Banco Mundial. La mayoría de esos proyectos están destinados a la selva de Darién, que es una pequeña extensión de la Amazonía en el territorio istmeño.

Expansión del problema interno de Colombia

Esa área de Darién actualmente es también lugar de expansión del problema interno de la vecina República de Colombia. Las incursiones de todas las fuerzas armadas del país vecino -militares, paramilitares y guerrilla- están siendo habituales y las selvas del Darién se han convertido en un campo de terror para los pueblos indígenas *emberás* y *kunas* que habitan el lugar, además de la población negra.

Antes se respetaba la vida de la gente panameña, pero durante el último año eso ha tomado otro giro, por lo que las mismas fuerzas policiales panameñas han tenido que militarizar la región. Y a consecuencia de esa misma militarización, han venido represalias de la parte colombiana que está provocando huidas masivas de comunidades indígenas hacia otras partes de Panamá, sobre todo hacia la ciudad, creando otros problemas sociales.

Este problema llegó a su máxima expresión cuando la incursión de una de las fuerzas irregulares mató a una tierna niña emberá a comienzos del mes de octubre de 2000.

En el caso de Kuna Yala, desde que la situación de Colombia se agravó, se ha puesto un nuevo centro militar en la comunidad de Armila y se han reclutado a más de 100 jóvenes kunas como policías fronterizos bajo los mandos militares de la Policía Nacional de Panamá.

Muere el Cacique General Kuna Carlos Inakelikinya López

El 7 de agosto de 2000 dejó de existir a los 87 años de edad uno de los más destacados guías espirituales, líder, historiador e intérprete de Bab Igala (Dios) de la comarca Kuna Yala, Carlos *Inakelikinya* López, quien además fue Cacique General del Congreso General Kuna. López era el único alumno viviente de grandes líderes y guías espirituales que ha tenido Kuna Yala. Además, era el único sobreviviente y testigo ocular de la Revolución Kuna de 1925. En 1997 publicó el libro *"Así lo vi, así me lo contaron"*, una sistemática evaluación de los hechos de sangre que ocurrieron en esa época.

Suspenden Proyecto Hidroeléctrico Tabasará 2

Una de las más polémicas discusiones a nivel nacional ha sido la construcción de grandes represas hidroeléctricas en territorios indígenas, sobre todo en la Comarca Ngobe-Bugle, en el río Tabasará, provincias de Veraguas y Chiriquí. El proyecto consistía en dos represas hidroeléctricas que tienen un costo de 105 millones de dólares. La obra preveía la inundación de por lo menos 500 hectáreas de terreno para la generación hidroeléctrica y además afectaría a más de 5 mil indígenas.

Durante todo el año se hicieron movilizaciones y toma de carreteras, lo cual ha demostrado la gran organización del pueblo *ngobe-buglé* en defensa de su territorio. La acción no sólo fue de parte de los indígenas, sino que a ellos se unieron los campesinos del lugar y organizaciones sociales del país. El apoyo dado por la Defensoría del Pueblo de Panamá (*ombudsman*) y de la Comisión de Asuntos Indígenas de la Asamblea Legislativa ha sido muy importante. El ex presidente del Congreso General Ngobe-Buglé y líder natural indígena, Alberto Montezuma, aseguró que ante la falta de respuestas del Estado con relación hacia dónde iban a ser trasladados los más de 5 mil indígenas que deben abandonar sus tierras a raíz de los proyectos Tabasará 1 y 2, ellos continúan oponiéndose a ambas iniciativas, por lo que lucharán "hasta las últimas consecuencias".

A comienzo del mes de diciembre de 2000, el viceministro de Gobierno y Justicia, Rodolfo Aguilera Franceschi, dijo que por decisión de la Corte Suprema de Justicia fue suspendido el proyecto hidroeléctrico Tabasará 2. Aguilera explicó que los campesinos e indígenas habían presentado una denuncia contra el estudio de impacto ambiental, recurso que llegó hasta la Corte Suprema de Justicia, que decidió rechazar el estudio y, por ende, suspender la obra.

Nueva legislación

Durante el año 2000 se aprobaron varias leyes a favor de los pueblos indígenas de Panamá:

La Ley No. 20 del 26 de junio de 2000 es una Ley *sui generis* sobre propiedad intelectual a nivel nacional y continental, que con aportes nuevos como la creación de un Departamento de Derechos Colectivos y Expresiones Folclóricas (Art.7); la creación de un cargo denominado Examinador sobre derechos colectivos indígenas (Art.9) para la protección de la propiedad intelectual y otros derechos tradicionales de los pueblos indígenas. Y por último, como una nueva innovación, el Artículo 25 establece que: "*Para los efectos de la protección, uso y comercialización de los derechos colectivos de propiedad intelectual de los pueblos indígenas contenidos en esta Ley, las expresiones artísticas y tradicionales indígenas de otros países tendrán los mismos beneficios establecidos en ella, siempre que sean efectuados mediante acuerdos internacionales recíprocos con dichos países*". Lo cual podemos calificar como un derecho de reciprocidad con otros pueblos indígenas de Abya Yala.

Con la Ley No. 34 de 25 de junio de 2000, *se crea la Comarca Kuna de Wargandi. Después de varios años de lucha esa comunidad kuna que habita en el pleno corazón de las inhóspitas selvas darienitas, vio hecho realidad sus sueños de tener un área geográfica delimitada, con los distritos de Chepigana y Pinogana, en la Provincia de Darién, con una superficie de 77.500 hectáreas.*

En sus artículos 3 y 6 la Ley reconoce el Congreso General como máxima autoridad tradicional y los congresos locales. El Congreso General y las autoridades tradicionales tendrán la función principal de fortalecer, desarrollar, conservar y proteger la cultura kuna, así como las tradiciones, idioma, unidad e integridad de sus habitantes y los recursos naturales de la Comarca, con el propósito de promover su desarrollo económico y social. El Artículo 16 reconoce la religión de *Ibeorgun* como la principal de los kunas de Wargandi. La Carta Orgánica de la Comarca regulará su promoción y difusión.

La Ley No. 35, de 25 de julio de 2000 consiste en la creación de un Patronato de las Ferias de los Pueblos Indígenas de la República de Panamá, como una entidad con personería jurídica, patrimonio propio y autonomía en su régimen administrativo.

El Patronato tendrá como finalidad organizar y realizar ferias y exposiciones nacionales e internacionales agroforestales, artesanales, culturales, etc., a fin de resaltar la riqueza cultural y nacional de los pueblos indígenas de Panamá. (Art.2).

Participación de la mujer indígena

La participación de las mujeres indígenas en Panamá es mucho más activa que en los años anteriores y se da en todos los niveles, en lo económico, social, político y cultural. Muchas de las dirigentes son mujeres indígenas jóvenes y hasta profesionales egresadas de universidades. Eso ha hecho que algunas mujeres indígenas lleguen a dirigir Congresos Indígenas, como en el caso de los emberás, y a nivel de comunidades como dirigentes, como se da entre los kunas. En el campo económico, los problemas se han agravado en los últimos años, y ahí la mujer indígena ha tomado las riendas de la economía del hogar, como en el caso de las mujeres kunas, que han convertido la venta de la "mola" o blusa como arte o artesanía en una de las fuentes de ingresos más estables de sus hogares. Igual ocurre entre otros pueblos indígenas como los emberás y *ngobes*. Se han creado importantes cooperativas de mujeres indígenas al igual que organizaciones con ese fin.

Las mujeres indígenas estuvieron en todas las movilizaciones que se hicieron a nivel nacional en defensa de los derechos de sus comunidades y su presencia es muy esperanzadora porque la fuerza de las mujeres indígenas ha hecho que se aceleren algunos procesos como la paralización del Proyecto Hidroeléctrico Tabasará 2.

A nivel internacional, este fue el año que más participación han tenido las mujeres indígenas de Panamá. Han asistido a casi todos los foros internacionales convocados por las Naciones Unidas u otras organizaciones regionales o por los mismos pueblos indígenas.

Fuentes

"*La Prensa*", Panamá 9 de agosto de 2000.
"*La Prensa*", Panamá 8 de diciembre de 2000.
López, Atencio, "María Mecha y el Plan Colombia".
Gaceta Oficial No.24.083 de 27 de junio de 2000 y No. 24,106 de 28 de julio de 2000.
Entrevista con Florina López, Encargada del Taller de Mujeres "Kikadiryai" y miembro directivo de la Asociación Napguana.

Hombre kuna. Foto: Andrew Young

AMERICA DEL SUR

AMERICA DEL SUR

VENEZUELA

Avances Constitucionales y Participación Política

Con la aprobación de la nueva Constitución de la República Bolivariana de Venezuela a finales de 1999, los pueblos indígenas lograron un reconocimiento bastante amplio de sus derechos específicos, colocándose la Constitución venezolana como una de las más avanzadas en América Latina en materia de reconocimiento de derechos indígenas (ver **Venezuela** en *El Mundo Indígena 1999-2000*).

En este contexto, durante el primer semestre del año 2000 y frente al proceso electoral para la relegitimación de los poderes públicos, ordenado por la Asamblea Nacional Constituyente, los pueblos y organizaciones indígenas a nivel nacional y regional se dedicaron a diseñar una estrategia que les permitiera como movimiento indígena, lograr esos importantes espacios de participación política para la toma de decisiones dentro de la dinámica del Estado venezolano.

Las organizaciones indígenas de cada uno de los 10 Estados con población indígena (Zulia, Amazonas, Bolívar, Delta Amacuro, Anzoátegui, Sucre, Monagas, Mérida, Apure y Trujillo) realizaron Asambleas Comunitarias locales y regionales para nombrar de manera participativa y democrática, según sus usos y costumbres, los candidatos a cada uno de los niveles de representación popular. Este proceso de selección de los candidatos a cuerpos legislativos, municipios y gobernaciones, permitió un importante crecimiento y maduración política por parte del movimiento indígena en su lucha por conquistar espacios de participación política.

Realizadas las elecciones el 30 de julio del 2000, el Consejo Nacional Indio de Venezuela (CONIVE) logró los tres diputados a la Asamblea Nacional establecidos por la Constitución: Noelí Pocaterra (*wayuú*) por la región occidental; Guillermo Guevara (*jivi*) por la región sur y José Luis González (*pemón*) por la región oriental. De igual manera, la Organización Regional de Pueblos Indígenas de Amazonas (ORPIA), la Organización Regional de Pueblos Indígenas del Zulia (ORPIZ), la Organización Pumé de Apure, y los *kariña* de Sucre y Anzoátegui lograron diputados a los Consejos Legislativos y concejales en sus respectivos estados. A nivel del poder ejecutivo, el movimiento político indígena "Pueblo Unido Multiétnico de Amazonas" (PUAMA) logró ganar la Gobernación del Estado Amazonas, con el primer Gobernador Indígena de Venezuela, Liborio Guaruya

BEST COPY AVAILABLE

MAR CARIBE
VENEZUELA
SURINAM
GUAYANA FRANCESA
GUYANA
COLOMBIA
ECUADOR
BRASIL
PERU
BOLIVIA
PARAGUAY
CHILE
OCEANO PACIFICO
URUGUAY
ARGENTINA
OCEANO ATLANTICO

BEST COPY AVAILABLE

(*baniba*) y tres Alcaldías de los Municipios Manapiare, Autana y Río Negro, en el mismo Estado.

De manera que, durante el período que cubre el presente informe y partiendo de los derechos reconocidos por la nueva Constitución, los pueblos indígenas organizados lograron conquistar importantes espacios dentro de las estructuras políticas del Estado venezolano, que permitirán avances significativos en el respeto de los derechos indígenas en los próximos años.

Aprobación de legislación favorable

Realizadas las elecciones del 30 de julio, se instaló la Asamblea Nacional en la cual los tres representantes indígenas lograron que se creara una Comisión Permanente de Pueblos Indígenas, la cual elaboró una agenda legislativa para el año 2000. Esta agenda dio prioridad al Proyecto de Ley de Demarcación de las Tierras Indígenas, el cual fue elaborado con la participación de las organizaciones indígenas regionales y nacionales, y a la discusión del Convenio 169 de la Organización Internacional del Trabajo (OIT).

Después de una larga discusión, el 21 de diciembre del 2000 fue aprobada la Ley de Demarcación y Garantía del Hábitat y Tierras de los Pueblos Indígenas y fue ratificado el Convenio 169.

La Ley de Demarcación *"tiene por objeto, regular la formulación, coordinación y ejecución de políticas y planes relativos a la demarcación del hábitat y tierras de los pueblos y comunidades indígenas a los fines de garantizar el derecho a las propiedades colectivas de sus tierras..."* (Art. 1) y define al hábitat indígena como *"La totalidad del espacio ocupado y utilizado por los pueblos y comunidades indígenas, en el cual se desarrolla su vida física, cultural, espiritual, social, económica y política; que comprende las áreas de cultivo, caza, pesca fluvial y marítima, recolección, pastoreo, asentamiento, caminos tradicionales, caños y vías fluviales, lugares sagrados e históricos y otras áreas necesarias para garantizar y desarrollar sus formas específicas de vida."* (Art. 2)

El proceso nacional de demarcación será planificado, ejecutado y coordinado por el Ministerio del Ambiente conjuntamente con los pueblos, comunidades y organizaciones indígenas y la Comisión Nacional de Demarcación del Hábitat y Tierras de los Pueblos Indígenas nombrada por el Presidente de la República.

Frente a la aprobación de la ley, los diversos sectores nacionales que se oponen al reconocimiento de los derechos de los pueblos indígenas reaccionaron señalando por los medios de comunicación que la aprobación de la Ley de Demarcación suponía una amenaza a la integridad territorial de la Nación venezolana. En este sentido, en un prestigioso diario de circulación nacional se señaló que:

"... hemos venido alertando acerca del peligro en que se coloca la unidad territorial venezolana, cuando se alientan teorías y prácticas que –aun siendo pretensiones justas- en el caso de Venezuela, sólo conciernen a menos del uno por ciento de la población... se está haciendo cada vez más visible en el continente americano donde los movimientos indigenistas han venido concentrando cada vez más poder hasta haber llegado a aliarse con otros grupos –como pasó en Ecuador a principios del 2000- para exigir y obtener cambios gubernamentales no compartidos por otros sectores más numerosos de la sociedad." [1].

La situación de los pueblos indígenas en Venezuela

A pesar del amplio reconocimiento de los derechos indígenas en la Constitución y de los notables avances legislativos, la situación de los pueblos indígenas del país sigue siendo verdaderamente crítica, sobre todo con relación al derecho a la tierra y el deterioro progresivo de la salud de las comunidades. En efecto, los graves problemas por la invasión de tierras indígenas y la ocupación de las mismas para proyectos estatales de desarrollo han continuado, sin que se hayan tomado medidas efectivas para solucionarlos.

Continuación del tendido eléctrico hacia Brasil en tierras del pueblo pemón

Durante el año 2000, numerosas comunidades *pemón* de la Gran Sabana siguieron protestando y denunciando la ocupación de sus tierras, los daños ambientales y los efectos secundarios por la construcción del tendido eléctrico hacia Brasil por parte del Gobierno venezolano, especialmente por su uso para actividades mineras. Ya que como lo señalaron en declaración pública los representantes de la Unidad Nacional Ecológica y Social, la vinculación del sistema de interconexión eléctrica del sureste con el esquema de desarrollo minero propuesto para el Estado Bolívar es un hecho difícil de ocultar, a pesar de todo lo expresado por voceros del Ministerio del Ambiente en su intento de defender el cuestionado proyecto.

El Ejecutivo Nacional realizó notables esfuerzos para lograr un acuerdo general con las comunidades pemón, incluyendo conversaciones directas entre las comunidades, el Presidente de la República, Hugo Chávez Frías y el Vicepresidente de la República, Isaías Rodríguez. Sin embargo, las comunidades se dividieron. Si bien un buen número de comunidades aceptó el acuerdo que incluía, entre otros aspectos, la obligación del Gobierno Nacional de proceder a la demarcación del hábitat y tierras en la Gran Sabana y la creación de un fondo de atención al desarrollo económico de las comunidades en la región, algunas comunidades señalaron que la aceptación de la propuesta violaba las propias costumbres indígenas, según las cuales la decisión se debía tomar por consenso. Estas últimas comunidades introdujeron en el mes de mayo del 2000 un Recurso de Amparo en el Tribunal Supremo de Justicia donde señalaban la inconstitucionalidad del tendido eléctrico y solicitaban la paralización definitiva de los trabajos de la línea de transmisión eléctrica por considerar que afecta su modo de vida tradicional y las tierras que habitan ancestralmente.

El recurso de amparo fue declarado sin lugar por el Tribunal Supremo de Justicia el 16 de noviembre del año 2000. No obstante, el fallo sentenció al Ministerio del Ambiente y de los Recursos Naturales que, con el apoyo de la Defensoría del Pueblo y de los representantes de las comunidades indígenas, diseñe y ejecute de manera inmediata un Plan destinado a verificar y garantizar el debido cumplimiento de las condiciones y medidas de mitigación. Estas medidas están previstas en las autorizaciones administrativas otorgadas a la empresa Electrificación del Caroní (EDELCA) para la ocupación del territorio y para la afectación de recursos naturales renovables a los efectos de la construcción de la línea de transmisión eléctrica.

Después de la decisión, las comunidades pemón que se oponen al tendido eléctrico continuaron sus acciones de protesta y paralizaron la obra en varias oportunidades tumbando varias de las torres que atraviesan sus comunidades.

Investigaciones científicas en áreas indígenas

En el mes de abril del 2000, las comunidades indígenas *piaroa* de Manapiare en el Estado Amazonas, denunciaron que el Instituto Nacional de Parques otorgó una autorización a representantes del Instituto Venezolano de Investigaciones Científicas (IVIC) y otras fundaciones, para realizar investigaciones sobre recursos genéticos en los monumentos naturales Cerro Yutajé, Yavi, Corocoro, Guanay, Camani y Morrocoy, los cuales constituyen lugares sagrados para el pueblo piaroa y se encuentran ubicados dentro de su territorio.

Dicha autorización fue otorgada sin consultar a los pueblos y comunidades indígenas que habitan la zona, tal como lo ordena la Constitución de la República y se hizo en el marco de un contrato de acceso a los recursos genéticos otorgado al IVIC por parte del Ministerio del Ambiente y los Recursos Naturales. Este contrato también otorgaba al IVIC derechos para el uso y aprovechamiento de los recursos genéticos. La denuncia formulada por las comunidades y la Organización Regional de los Pueblos Indígenas de Amazonas (ORPIA) fue tramitada por el Ministerio del Ambiente y el Instituto Nacional de Parques y después de una polémica a nivel nacional sobre el tema de las investigaciones científicas en tierras indígenas, el permiso otorgado por el Instituto Nacional de Parques fue derogado.

En el mismo sentido, durante el año 2000 se formularon serias denuncias sobre investigaciones científicas realizadas en la década de los años

60 en el área del Alto Orinoco (Estado Amazonas) entre los indígenas *yanomami*. En efecto, después de publicado el libro "*Darkness in El Dorado*" del periodista norteamericano Patrick Tierney, se generó toda una polémica sobre las investigaciones en la zona, ya que en dicho libro se trata de probar que algunos científicos norteamericanos, en asociación con la Comisión de Energía Atómica de Estados Unidos, usaron a los yanomami como grupo de control de la bomba atómica, a través de la introducción de isótopos radiactivos y la utilización de una vacuna contra el sarampión que generó la muerte de un número considerable de personas dentro de la etnia. En este caso las denuncias fueron llevadas ante la Vicepresidencia de la República y la Comisión Permanente de Pueblos Indígenas de la Asamblea Nacional, en la que se abrieron investigaciones que aún no han sido concluídas.

Explotación de carbón en tierras yukpa y barí en la Sierra de Perijá

Las concesiones mineras otorgadas a empresas públicas y privadas por el Ministerio de Energía y Minas en la Sierra de Perijá (Estado Zulia), tierras tradicionales de los *yukpa* y los *barí*, siguen afectando la vida de estos pueblos indígenas. Frente al otorgamiento de nuevas concesiones, los pueblos indígenas introdujeron un recurso de amparo en el que exigen que el Ministerio de Energía y Minas paralice el proceso de otorgamiento de concesiones en esa área bajo régimen de administración especial. Sin embargo, este recurso de amparo fue declarado sin lugar en el Tribunal Supremo de Justicia, alegando que una pretensión de tal trascendencia no puede acordarse mediante un proceso breve y sumario como el amparo.

La situación de salud de los pueblos indígenas

A pesar de que la Constitución consagra el derecho para los pueblos indígenas a una salud integral que considere sus prácticas, culturas y medicina tradicional, la situación de salud de varios pueblos indígenas sigue siendo verdaderamente crítica. Durante el año 2000, los brotes de cólera y tuberculosis han afectado drásticamente al pueblo *warao* (Estados Delta Amacuro y Sucre) y a los *kariña* (Estado Sucre) donde se produjeron numerosas muertes por estas y otras enfermedades, sobre todo de población infantil. En el Estado Zulia, los brotes de cólera y dengue han afectado fuertemente al pueblo *wayuú*. Por otra parte, en los Estados Bolívar y Amazonas el aumento del paludismo afectó notablemente a numerosas comunidades indígenas. Con relación a los *yanomami*, a fines del año 2000, en el Estado Amazonas se presentaron serias denuncias debido al aumento de la mortalidad infantil, sobre todo debido a las complicaciones de enfermedades respiratorias, con paludismo y hepatitis B, las cuales se han convertido en enfermedades endémicas en la zona. En todos estos casos se destaca el hecho de que la atención brindada por el Estado venezolano no sólo es insuficiente, sino que en algunos lugares no se presta o se realiza de manera muy esporádica, lo cual impide que se tomen medidas eficaces para controlar la grave situación sanitaria en que se encuentran muchos pueblos indígenas.

Referencia

[1] **Adolfo P. Salgueiro**, *El Universal* 27 de enero del 2001.

COLOMBIA

La Constitución de 1991 y los pueblos indígenas

Para los indígenas, la Constitución Política de Colombia expedida en 1991 fue algo sin precedentes en la historia de Colombia, pues sus derechos fundamentales fueron elevados a rango constitucional. Se nos abría la perspectiva, 500 años después de la Conquista, de transformar lo que había sido violencia y opresión en un nuevo encuentro fértil. Mirábamos con optimismo el futuro.

10 años después, no existen razones para mantener este optimismo. En parte porque a pesar de todos los artículos de la Constitución referidos al respeto de las diferencias étnicas y culturales, el Estado colombiano no se ha identificado con un propósito de revisar el proyecto de nación excluyente que tenemos. Y en parte, porque mientras el Estado abría sus puertas a los indígenas, el gobierno de aquel entonces se las cerraba en el campo económico, esa esfera que es determinante para el bienestar y para superar las condiciones de oprobio y marginación que han vivido los pueblos indígenas. Se trataba pues de una apertura constitucional, mas no económica. Lo que el gobierno de Gaviria llamó "Apertura económica" estaba pensada hacia afuera, fundamentalmente para atraer capitales que se vincularan a la explotación de recursos mineros y energéticos.

Hoy los problemas estructurales de la economía y sociedad colombianas siguen siendo los mismos. Es más, se han agudizado: las desigualdades sociales han crecido y la violencia contra los pueblos indígenas, contra campesinos, obreros y afrocolombianos, cobra más víctimas que nunca. En Colombia han muerto violentamente en esta década cerca de 300.000 personas y más de un millón y medio de campesinos han sido desplazados de sus tierras, cifras estas sólo comparables con países en guerra. Los derechos de los colombianos, aún aquellos más esenciales, tienen hoy, después de diez años de vigencia de la nueva Constitución, sólo un valor programático y hacen parte de las utopías que esperan a mejores tiempos para ser realizadas.

La participación indígena en la Asamblea Nacional Constituyente con sus proposiciones espirituales e ideológicas produjo, sin embargo, cambios positivos en la sociedad colombiana, pues el comportamiento y espiritualidad de los pueblos indígenas son vistos hoy con respeto y admiración. Sus sistemas de organización, producción, distribución, reproducción, sus formas de transmitir el conocimiento y sus maneras de entender el desarrollo ofrecen alternativas en lo económico, social y tecnológico y es una ampliación de Humanidad.

Las preocupaciones indígenas por la destrucción de ecosistemas y espacios de vida también contribuído al el surgimiento de ideas proteccionistas y preservacionistas, y a la formación de movimientos y escuelas que buscan nuevas condiciones para un desarrollo económico que garantice la convivencia con la naturaleza.

La desestructuración de las economías y organizaciones indígenas

Pero estas ideas no han tenido eco en el Estado colombiano. A pesar de que la *diversidad étnica y cultural* de la Nación colombiana es considerada una riqueza (además de estar protegida constitucionalmente), el Estado tolera (cuando no promueve) planes de desarrollo local, regional y nacional que desestructuran las economías y las organizaciones de los pueblos indígenas. La necesaria autonomía que requieren los pueblos indígenas para su desarrollo económico y social queda vaciada de contenido cuando el Estado instrumentaliza una visión política que concibe a la nación colombiana como un gran mercado, donde concurren sectores económicos en libre competencia.

En abierta contradicción con la Constitución Nacional, que piensa para la Nación colombiana un reordenamiento territorial donde primen criterios históricos, geográficos, ambientales, ecológicos, culturales y étnicos, el Estado colombiano está realizando otro ordenamiento territorial con las actuales inversiones nacionales, departamentales y municipales, centradas en macroproyectos extractivos, agroindustriales, hidroeléctricos y de vías de comunicación. Estas inversiones, en muchas de las cuales están vinculadas empresas multinacionales, vienen modificando las articulaciones locales, transformando las dinámicas económicas regionales y alterando la territorialidad de los pueblos indígenas.

En el ámbito político, el Estado no tolera el disenso de la población frente a estas políticas económicas. La protesta social y la movilización de sectores sociales afectados son señalados como intentos de fuerzas guerrilleras de desestabilizar el país y erosionar el Estado de Derecho. Esta actitud del

Estado es la que ha permitido la eclosión de comandos paramilitares, que en los últimos años, y precisamente en aquellas regiones donde se realizan o se prevén macroproyectos económicos, han realizado acciones militares contra la población, con los resultados que hemos mencionado anteriormente.

Problemática del Pacífico en el contexto de la sociedad colombiana

En el Pacífico colombiano vivimos cerca de 100.000 indígenas pertenecientes a los pueblos *tule, embera, katío, chamí, eperara-siapidaara, wounaan* y *awa*.[1] Tenemos lenguas, costumbres y creencias diferentes, pero estamos unidos por la selva y por una naturaleza exuberante y generosa que nos brinda alimentos, techos y vestidos. Compartimos también una historia de negación y luchas por conservar nuestros territorios, culturas y el derecho a vivir de acuerdo a nuestras tradiciones, a elegir formas de gobierno acordes con nuestras necesidades y a decidir autónomamente sobre el futuro.

Hemos convivido en estas selvas con poblaciones negras, traídas de África para trabajar en las minas. Compartimos con ellas anhelos de libertad y autonomía y nos reconocemos mutuamente en nuestras diferencias. Esta población afrocolombiana, hoy cerca del 80% de la población de esta región, llegó a nuestros territorios huyendo de la esclavitud y adoptó de nosotros muchas prácticas tradicionales de uso y manejo de la naturaleza.

Esta región, paradójicamente llamada "El Pacífico" es, en realidad, el epicentro de múltiples violencias. Porcentualmente es la región con más desplazados y más muertes violentas. Y es también una de las regiones más olvidadas del país. Para el Estado y su modelo económico, los indígenas no existimos, pues nuestros territorios no están en venta y nuestra producción no obedece a demandas mercantilistas sino que está destinada fundamentalmente a satisfacer nuestras necesidades. Por eso es que somos un número inútil en el Producto Bruto Interno del país y un rubro en blanco en la contabilidad del Estado. Pero las cuentas oficiales no estiman la conservación de las selvas y la protección de la naturaleza, pues el Pacífico biogeográfico es uno de los espacios biológicos más diversificados del planeta.

Los problemas que vive Colombia contribuyen a alimentar y reproducir la crisis que vivimos los indígenas del Pacífico. Tienen que ver con:

Una crisis de legitimidad del Estado y desinstitucionalización de la Nación

En Colombia existe una gran tradición de desobediencia a las leyes del Estado. Y existen buenas razones para ello, pues en el pasado ellas permitieron legitimar la apropiación privada de bienes y riquezas colectivas. En esto, los pueblos indígenas, tienen la mayor acumulación de experiencias. Pero esta desobediencia ante un Estado al servicio de intereses privados privilegiados se ha desbordado en las últimas décadas: la evasión fiscal, el

Producción artesanal embera. Foto: Alberto Achito

Aldea embera. Foto: Alberto Achito

contrabando, la posesión ilegal de la tierra, el saqueo de los dineros públicos, la apropiación privada de las riquezas de la Nación, las elecciones fraudulentas, la compra de votos, el secuestro y por último el narcotráfico, con todas sus secuelas de corrupción, violencia y capacidad desestabilizadora, han terminado por desinstitucionalizar al país.

El clientelismo, la crisis de representación política y la instauración de la fuerza y la intimidación para asegurar lealtades partidistas

Todos estos factores han socavado el ordenamiento jurídico y la aplicación de la justicia en imperio del derecho, cuyo monopolio debiera estar sólo bajo la responsabilidad del Estado. En la medida en que el Estado se reduce en materia de justicia, crece el espectro social de aquellos que se arrogan la potestad de imponer y aplicar, por la vía de los hechos, sus propias leyes. Esta suplantación del derecho y la ley por el imperio de la violencia y el poder de la fuerza ha contribuido a la pérdida de la convivencia ciudadana. En este momento, el tema de la violencia ocupa mayoritariamente la atención de todos los colombianos. Y no podría ser de otra manera, ya que el conflicto armado en Colombia ha entrado en un proceso de degradación humanitaria nunca antes visto en el país. El promedio anual de muertes violentas de la última década es de 32.000 personas al año, siendo la primer causa de mortalidad en el país.

Con el escalamiento de la guerra, las mujeres se han visto obligadas a asumir nuevos roles sociales, como viudas o como madres desplazadas que tienen que velar por el sustento y la supervivencia de sus familias y, en varias ocasiones, de la cohesión y permanencia de sus comunidades. Debido a la circunstancia de ser mujeres en un medio machista que subvalora la capacidad política de las mujeres, no son objeto de presiones e intimidación por parte de los actores armados del conflicto. No obstante, el impacto emocional que causa el asesinato o la desaparición de sus hijos, esposos o parientes cercanos es muy grande. Esto viene creando una gran preocupación en nuestras comunidades y es uno de los temas centrales en las Asambleas y encuentros indígenas, pues cuando la guerra no sólo toca a nuestras organizaciones, sino que sus efectos se sienten especialmente sobre las mujeres, se acrecienta la ruptura familiar y comienza la desestructuración social y cultural de nuestros pueblos.

Ha surgido entonces una así llamada "aculturación de la ilegalidad", que está beneficiando a aquellos sectores poderosos que recurren casi exclusivamente al uso de la fuerza para el logro de sus fines políticos y económicos, principalmente el control de beneficios asociados a la explotación de recursos naturales, posesión de tierras fértiles, dominio de territorios geopolíticamente estratégicos e implantación de una economía basada en cultivos ilícitos (coca y amapola) en amplios espacios del territorio nacional. Estas regiones son en la actualidad objeto de disputa entre sectores armados, pues tener el control sobre las mismas y sobre esta economía es vital para el financiamiento de sus ejércitos y sus acciones.

Para los pueblos indígenas ha sido nefasto tener territorios provistos de recursos naturales, pues su extracción, junto con la producción de drogas ilícitas, son las actividades que más rentas producen. La explotación de oro, petróleo, esmeraldas, carbón, maderas finas, etc., son actividades lucrativas predilectas por los poderes económicos (legales o ilegales). El inconveniente más grande de estas actividades económicas extractivas es la miseria y violencia que su aprovechamiento genera en su entorno.

Paradójicamente, las regiones mejor dotadas con recursos naturales son aquellas donde se encuentran los focos más conflictivos del país, con las cifras más altas de desplazamientos, asesinatos y secuestros. Regiones relativamente jóvenes, en pocos años se han convertido en zonas decrépitas al entrar en el engranaje de esta actividad económica. La miseria y la violencia se trasladan a estas regiones, para quedarse: las zonas esmeralderas de Boyacá, las petroleras de Arauca y Casanare, las coqueras de Guaviare, Caquetá y Putumayo, ejemplifican esta situación. Con el oro, la madera y últimamente la coca[2], con sus grandes ríos, con sus mares, con su posición estratégica[3], con sus riquezas naturales[4], con su gran biodiversidad y sus tierras ambicionadas para la ganadería extensiva, el Pacífico entró en esta dinámica y ya estamos sintiendo las consecuencias.

Los ojos de muchos "empresarios" rapaces y capitales "golondrina" que se desplazan de un sitio a otro buscando beneficios están puestos sobre esta región. De allí que los indígenas seamos un obstáculo en el camino y estemos siendo objeto, junto con la población negra y campesina, de toda especie de atropellos por parte de madereros, narcotraficantes, terratenientes y sus ejércitos paramilitares.

Por estas razones podemos entender por qué el pueblo indígena *u'wa*, en el oriente colombiano, sin menoscabo de sus razones culturales, se opone radicalmente a la exploración de hidrocarburos en su territorio y esté dispuesto a suicidarse, antes de permitir la entrada de compañías petroleras.

Una agenda de trabajo para concretar nuestros sueños

Aquí hemos señalado como los principales problemas que nos agobian en el Pacífico tienen un contexto nacional. La solución de estos problemas pasa necesariamente por cambios estructurales políticos y económicos a nivel nacional. No obstante, sabemos que la defensa del Pacífico empieza en la región. Es por eso que en este momento nos encontramos elaborando nuestra propia agenda de lucha y haciendo nuevos ajustes a nuestras organizaciones para adecuarlas más a la situación de emergencia social, cultural, económica y territorial que viven nuestros pueblos. Esto nos fortalecerá internamente para continuar esta ya larga lucha por la defensa de nuestros territorios. Lo mismo esperamos que hagan las comunidades afrocolombianas del Pacífico. De ello va a depender el futuro del Pacífico y de nuestros pueblos.

Actualmente estamos organizados en niveles locales, zonales y regionales en esa macroregión del Pacífico. Algunas organizaciones indígenas son más amplias y tienen mayor trayectoria organizativa, otras llevan pocos años de conformación y se encuentran consolidando sus programas de trabajo. Estas organizaciones comprenden, entre otras, la *Organización Regional Embera-Wounaan del Chocó*, OREWA, que congrega a 240 comunidades y el mismo número de Cabildos Indígenas locales. Los 40.000 indígenas bajo su orientación pertenecen a cinco pueblos indígenas: *embera, tule, katío, chamí y wounaan*; la *Organización Indígena de Antioquia*, OIA, que representa a los 13.500 indígenas del Departamento de Antioquia, pertenecientes a los pueblos *chamí, katío, tule y zenú*; y la *Unidad del Pueblo Inkal Awa*, UNIPA, que es una organización zonal que agrupa a 22.000 indígenas *awa* en el Departamento de Nariño.[5]

Recientemente, estas organizaciones y pueblos indígenas han decidido unir sus voluntades y esfuerzos para enfrentar las amenazas y la violencia que están sufriendo y poder unidos defender sus territorios y sus vidas. Este hecho se está materializando con la conformación de la *Coordinadora Indígena del Pacífico*, que está siendo apoyada por IWGIA.

Esta coordinación indígena tiene como tareas fundamentales apoyar los procesos de consolidación cultural y de apropiación económica y organizativa de los territorios indígenas en la región del Pacífico, para buscar el fortalecimiento político de nuestros pueblos con miras a constituirnos en verdaderos actores sociales con capacidad para intervenir en la región y evitar el etnocidio en ciernes sobre nuestros pueblos. Esta voluntad de trabajo mancomunado es, a nuestro juicio, uno de los logros más importantes de nuestras organizaciones en estos últimos doce meses y un reto para los dirigentes y autoridades tradicionales de nuestros pueblos.

Notas

[1] El Pacífico Colombiano tiene una extensión de aproximadamente 80.000 kilómetros cuadrados. Con 1.300 kilómetros de costa, se extiende desde la frontera con Panamá hasta el Ecuador y se encuentra aislado del resto del territorio nacional por la presencia de la cordillera occidental.

[2] El narcotráfico se está apoderando de la región. Antes se utilizaba su excelente situación geográfica para embarcar la droga. Hoy se extienden los cultivos de coca. El narcotráfico está afectando todas las actividades productivas de la región y está presente en la financiación de campañas políticas y en la actividad paramilitar.

[3] Se considera como actividad sustancial para el desarrollo la creación de una red vial que una al Atlántico con el Pacífico y existen cuatro macroproyectos viales.

[4] El desarrollo de los sectores petrolero, minero, energético y la exploración biológica y genética, son considerados como actividades económicas prioritarias.

[5] Las demás son: las organizaciones del pueblo *eperara siapidaara*, o sea de 7.000 personas en la zona costera de los Departamentos del Valle, Cauca y Nariño; el *Cabildo Mayor Awa de Ricaurte*, representando a 8.000 indígenas *awa* del Municipio de Ricaurte en Nariño; la *Asociación de Autoridades Wounaan del Pacífico*, agrupando a 29 comunidades *wounaan* y *eperara siapidara* del Bajo San Juan; y los *Cabildos Mayores Embera-Katío del Río Verde y Río Sinú*, con 3.500 indígenas *embera-katío* del Departamento de Córdoba.

ECUADOR

El último levantamiento ocurrido en Ecuador entre la última semana de enero y primera de febrero de este año (es decir a un año del levantamiento que provocó la caída del Presidente Mahuad) configura la característica de la dinámica sociopolítica de este país. Un Estado mono-étnico en crisis estructural, controlado por una élite política y empresarial oligárquica y corrupta, una economía en bancarrota en la que los pobres constituyen el 80 por ciento de la población (en su mayoría indios) que permanentemente resulta la más afectada por las consabidas políticas draconianas dictadas por el Fondo Monetario Internacional y una población indígena organizada que abarca más del 40 % de la población del país, convertida en un verdadero poder social capaz de hacer retroceder las decisiones del gobierno con levantamientos que paralizan al país, como ha quedado demostrado en la última protesta. Así, en este contexto, el proceso de las nacionalidades y pueblos indígenas del Ecuador, avanza en un permanente tira y afloja con el gobierno de turno.

Año 2000: Una de cal y otra de arena

Una vez instalado en el gobierno -por las fuerzas armadas- el Presidente Gustavo Noboa, experimentó una estrategia de relación con los pueblos indígenas, con el supuesto fin de "atender las demandas indígenas", cuyo incumplimiento por su antecesor Mahuad le significó la caída. La política indigenista adoptada por Noboa hablaba por sí sola. Vía decreto y con ofrecimientos rimbombantes creó el G.A.N.E: "Gran Acuerdo Nacional Ecuatoriano", dirigido por un joven abogado "amigo y conocedor de los indios", con alguno que otro acólito antropólogo y sociólogo "expertos en indios".

Con anterioridad a la puesta en marcha de la estrategia gubernamental, la CONAIE, junto con otras organizaciones sociales del país, inició una campaña orientada a recolectar firmas de apoyo para una Consulta Popular sobre aspectos inherentes a la reforma del Estado y la política internacional del Ecuador. Las preguntas que se planteaban para la Consulta se referían a: supresión de los tres poderes del Estado (Legislativo, Ejecutivo y Judicial); extradición de los banqueros corruptos prófugos de la justicia; retiro de la presencia militar estadounidense de la base de Manta; entre las principales. La presentación oficial de las firmas de apoyo a la Consulta (según sondeos de opinión contaba con más del 90% de aceptación por parte de la opinión pública) se hizo en agosto (2000).

Mientras tanto, mucho antes de agosto, el GANE se había convertido en una verdadera farsa. En seis meses de dilatadas reuniones demostró su ineficacia. Tras una treintena de reuniones denominadas "mesas de diálogo" emergió la frustrante constatación de la ausencia de voluntad para alcanzar verdaderos acuerdos por parte del gobierno. La paradoja del GANE se completó con el fracaso y la ruptura del diálogo. La resolución de la CONAIE en favor de otro levantamiento no se hizo esperar. Ante aquello, para neutralizar la movilización que amenazaba con destronar también al nuevo presidente, el gobierno hizo gala de una imaginación que evocaba las aciagas épocas del siglo XVI, dedicándose a repartir (en las comunidades que consideraba "más combativas") latas de atún y carretillas.

La convocatoria de levantamiento, previsto para septiembre del 2000, no tuvo eco y el gobierno celebró su triunfo sobre los indígenas por su supuestamente acertada política. A este hecho se sumó la publicitada verificación de las firmas de respaldo para la Consulta planteada por la CONAIE y otras organizaciones sociales que, según la versión del Tribunal Supremo Electoral, contenía una serie de irregularidades, tales como la falsificación de la mayoría de las firmas. Con ello se esfumaron las posibilidades de que, en un hecho sin precedentes, el país entero se pronunciara por una reforma política planteada por los indígenas. Hubo acusaciones de toda índole y la inminencia de un juicio penal al presidente de la CONAIE Antonio Vargas era cada vez más cierta.

¿Control interno?

La falsificación de las firmas y el fallido levantamiento fueron los ingredientes que colocaron a la CONAIE en el ojo de la tormenta. En el caso de las firmas, pese a que las organizaciones sociales mestizas eran corresponsables del fracaso, nunca dieron la cara. Las exigencias de una purga interna en la CONAIE no se hicieron esperar. Una Asamblea realizada en noviembre de 2000 adoptó la resolución de adelantar la renovación de la dirigencia de la CONAIE a marzo de 2001.

Sin embargo, esta resolución no criticó el papel de las organizaciones indígenas regionales ni de las bases de los diferentes pueblos y nacionali-

En el mercado, Otavalo, Ecuador. Foto: ***International Labour Office***

Joven indígena, Embabura, Ecuador. Foto: ***Rolf Blomberg***

dades, aunque todas estas instancias fueron generadoras de las decisiones en torno a la Consulta, como también del levantamiento fallido. Estas instancias deben y deberían asumir su responsabilidad como actores protagónicos de estos hechos, en lugar de evacuar toda la responsabilidad en unos pocos miembros de Consejo de Gobierno de la CONAIE.

Por ello el manejo interno que se ha dado a este tema resulta una suerte de cacería de brujas que aún se puede rectificar, pues la responsabilidad es de todos y todas, de las dirigencias así como de las bases, es decir, de la misma forma en que se adoptan las decisiones.

Reafirmación indígena

En estas circunstancias y ante una organización indígena aparentemente debilitada y sin convocatoria, el gobierno procedió a adoptar a inicios de enero de 2001 una traumática medida de ajuste recetado por el FMI. La CONAIE, que ha mantenido una línea de oposición radical a estas políticas neo-liberales, inició inmediatamente las consultas orientadas a asumir una posición frente al hecho. Las medidas tenían que ver básicamente con el alza de combustibles.

Ante el escepticismo del gobierno, la CONAIE anunció a mediados de enero de 2001 la inminencia del levantamiento indígena a nivel nacional. El inicio fue progresivo desde el 21 de enero, con la celebración del aniversario de la caída de Mahuad. El 28 de enero Quito fue tomado por aproximadamente 10 mil indígenas. Ante la militarización de todos los espacios públicos con el fin de evitar la ocupación de los indígenas, estos optaron por solicitar a la Universidad Politécnica Salesiana sus espacios para permanecer allí hasta que el gobierno respondiera positivamente a las exigencias del movimiento indígena que, en resumen, era la derogatoria de las medidas.

Entre el 29 de enero y el 1 de febrero el gobierno desató una represión con mucha violencia y racismo. Todos los accesos al recinto universitario fueron cerrados por elementos policiales, quienes impedían la introducción de alimentos, medicina, vituallas y agua. Inclusive se suspendieron los servicios de luz, teléfono y agua. Los aproximadamente 10 mil indígenas, entre los que se hallaban cientos de infantes con sus madres, quedaron en una suerte de gran campo de concentración, mientras que en las calles se desarrollaban batallas campales entre indígenas y policías a caballos, quienes en varias ocasiones bombardearon con gases lacrimógenos los interiores de la Universidad.

Recién el 1 de febrero, cuando el gobierno cayó en cuenta de que el levantamiento había tomado fuerza en todo el país y los efectos (desabastecimiento alimentario y de combustibles) alarmaban los centros urbanos, el gobierno optó por plantear un diálogo. Sin embargo, la represión no cesaba y el 5 de febrero llegó al extremo, cuando el ejército provocó una masacre en la ciudad amazónica de Tena, donde hubo cuatro muertos y decenas de heridos. Tras la suspensión del diálogo por parte del presidente de la CONAIE, el gobierno accedió a una gran parte de los planteamientos indígenas.

El 7 de febrero de 2001 se firmó un Acuerdo de 23 puntos entre el gobierno y las organizaciones indígenas del país, cuya viabilización está en discusión desde el 20 de marzo de 2001 por parte de varias mesas de diálogo. Los Acuerdos son básicamente coyunturales y de contenido económico. Paradójicamente, no incluyen temas de fondo inherentes a los derechos colectivos, la autonomía de los pueblos indígenas y la reforma del modelo de Estado. Sin duda se hace fundamental que paralelamente a las negociaciones de los puntos del Acuerdo, el movimiento indígena inicie un diálogo con otros sectores sociales sobre una agenda que plantee cambios sustantivos en el sistema político–administrativo ecuatoriano. El movimiento indígena ecuatoriano tiene todas las condiciones para liderarlo.

La reafirmación del movimiento indígena como un poder social real y la conducción firme e inteligente asumida en el levantamiento, fortalecieron a la dirigencia, particularmente al Presidente de la CONAIE Antonio Vargas. Tras este hecho, la renovación del Consejo de Gobierno de la CONAIE, quedó postergada para octubre de este año. Tras la presidencia de la CONAIE existe una cerrada disputa entre varias figuras de las organizaciones andinas.

Pueblos indios y el ocaso del Estado liberal monoétnico

"El zapatismo es uno de los movimientos populares contra el neoliberalismo más importante del mundo, y si logra vincularse con otros grupos sociales a nivel internacional, podrá cambiar el curso de la historia". Así lo expresó en "La Jornada" de México el intelectual estadounidense Noam Chomsky.

Es un camino que se ha afirmado paso a paso, en donde las huellas de mujeres y hombres del otro México quedan más profundas en la tierra en que caminaron sus ancestros, mucho antes que Cortés y durante todas las épocas en que una minoría organizaba y medraba –como ocurre en todas las ex colonias del continente- una democracia, como afirma Chomsky, concebida para proteger de la mayoría a la minoría opulenta o a los "económicamente rezagados ".

"Vulneración de la soberanía nacional"; "fragmentación del país"; "creación de un Estado dentro de otro Estado". Estas son las razones de las élites tradicionales económicas y políticas para oponerse a los Acuerdos de San Andrés. Las mismas razones las hemos escuchado en Ecuador. Son razones idénticas que comparten las cúpulas de las ex colonias. Son razones de quienes defienden la vigencia *ad infinitum* de los Estados monoétnicos, cuya insostenibilidad y la consecuente urgencia de cambios profundos resultan más que evidentes. Eso significa lo que Marcos sostiene como condición fundamental para erradicar la espiral de los conflictos sociales: *"Ir a los orígenes de los conflictos, de lo contrario, hacer política seguirá siendo el arte de simular"*.

El Presidente Fox ha insistido en la suscripción de un Acuerdo de Paz. Cabe preguntarse ¿los Acuerdos de San Andrés son para el Gobierno una suerte de campo de batalla? Lo único que nos consta y aún duele en la memoria, son las masacres perpetradas por el ejército federal en Aguas Blancas y El Charco. La paz será posible sobre la base de nuevas reglas políticas, sociales, económicas y culturales, y significa en esencia el respeto al derecho a la autodeterminación de los pueblos indígenas. Lo que ocurre en México ocurre en Ecuador y todos los Estados ex coloniales del mundo, con pueblos indígenas sometidos a vivir bajo estructuras monoétnicas y la adaptación *sui generis* de la democracia liberal a reducir al público a votar y observar. Paradójicamente, al mismo tiempo en que el mundo asiste a la cacareada globalización, también asiste al ocaso de esas estructuras monoétnicas.

La marcha zapatista, el alzamiento de los *ayllus quechua* y *aymará* en Bolivia, la solitaria razón histórica de los *uwa* en Colombia, los levantamientos indígenas en Ecuador, constituyen las piedras que golpean una y otra vez al gigantesco domo que protege la estructura monoétnica sustentada en la bestia sagrada del dinero y la corrupción. Esas piedras se llaman resistencia, que es la forma en que la esperanza se viste cuando los tiempos son adversos (Marcos).

¿Democracia o indigenismo etnófago?

"Indigenismo etnófago", es el concepto con que Díaz Polanco define las políticas estatales indigenistas que se implementan en América Latina como respuesta a la eclosión étnica, y que consisten en el reconocimiento de un paquete de derechos, acompañado de declaratorias sobre la pluriculturalidad y multiétnicidad de los Estados manteniendo, no obstante, en lo sustantivo el *status quo* y los modelos económicos draconianos.

La historia señala que el reconocimiento de los derechos indígenas nunca se ha alcanzado mediante la exclusiva buena voluntad de las élites, ni por la vigencia *per se* de un paradigma occidental denominado "democracia", sino gracias a la perseverancia en la lucha y la resistencia por el reconocimiento del derecho a existir como pueblos. En la construcción nacional, en democracia o no, los indígenas siempre fueron hechos invisibles, es decir, los Estados han sido concebidos sin los pueblos indígenas, a imagen y semejanza de un Estado europeo o norteamericano. En consecuencia, la democracia y sus valores ideales no han tenido otra comprensión ni referente que el universalmente asumido por Occidente desde la antigua Grecia. Por mucho que se invoque a este paradigma como el único escenario posible de la realización de las múltiples libertades y la única posibilidad de convergencia de los más diversos conflictos y acuerdos, estos sólo resultan procesados en los estrictos parámetros de la visión occidental.

Por ello resulta sumamente difícil, si no soslayada, la aplicación de los derechos colectivos, ya que las libertades que se conciben universalmente en la lógica occidental son fundamentalmente individuales. Por ello se entiende también por qué un concejal, un alcalde, prefecto o diputado indígena no resultan elegidos bajo las propias formas de democracia. Por ello los administradores de Justicia y las escuelas de Derecho no reconocen la existencia de sistemas jurídicos indígenas. Por ello también la autonomía planteada por los indígenas espanta a los defensores del Estado unitario y el planteamiento del Estado Plurinacional es leído en la lógica del Estado Proletario o el Estado Indígena. Por ello también se aplican modelos de desarrollo profundamente etnocéntricos, homogeneizantes y contranatura, lejanos a la filosofía indígena del "buen vivir".

Por eso cabe replantear la comprensión de la Democracia. Construir una democracia vertebrada en los múltiples ideales y paradigmas de occidente y de las sociedades diversas del Ecuador, cuyo eje dinamizador sea la interculturalidad como código ontológico de conducta en todos los quehaceres de la vida social, política, económica, cultural y religiosa. La sola declaratoria de que Ecuador es multiétnico y pluricultural no nos hace interculturales. La interculturalidad debe ser entendida como un proceso comunicacional que tiene como punto de partida antes que al emisor, al receptor del mensaje. Debemos reconceptualizar la democracia, empezando por despojarla del esencialismo cosmogónico occidental. El reto es reinventar una democracia multiparadigmática.

De lo contrario, en la creencia de que los indígenas deben participar en el juego de la democracia, se puede reeditar la misma lógica de las políticas indigenistas vigentes hasta la década de los setenta, que planteaban integrar a los pueblos indígenas a la "sociedad nacional" sobre la renuncia a la propia identidad para su mejor asimilación. Cabe entonces plantear el encuentro y la armonización de las diversas culturas democráticas existentes en el Ecuador y poner fin, sobre nuevas estructuras y relaciones, al indigenismo etnófago.

PERÚ

Panorama general

La segunda mitad del año 2000 mantuvo, y llevó al extremo, la tónica de profunda inestabilidad y turbulencia política que ha caracterizado al Perú durante los últimos años. El anunciado fraude electoral se consagró sin disimulo, merced a un exceso de confianza en las posibilidades que ofrecía el manejo total de un poder absoluto que se mostraba como orientado a perdurar. No obstante, las fuertes reacciones populares del 28 de julio y una creciente desconfianza de parte de los organismos internacionales de derechos humanos comenzaron a desinflar la prepotencia de la cúpula militar encabezada por el jefe de la hoy considerada "banda mafiosa", pero que durante 8 años mantuvo una fachada de gobierno legítimo.

Los habituales métodos de manipulación de la información comenzaron a ser ineficaces y un frustrado intento de camuflar como un éxito del Servicio de Inteligencia una amplia red de narcotráfico y contrabando de armas fue el detonante de una serie de procesos que terminarían por asestar golpes mortales a la fuerte estructura organizada desde Inteligencia y los Cuarteles nacionales.

El 14 de septiembre aparece el primero de una larga serie de documentales filmados con pruebas de la amplitud y generalización de la corrupción. El 16 de septiembre el Presidente Fujimori anuncia su retiro y, tras la denuncia de ingentes sumas de dinero transferidas a Montesinos a través de diferentes bancos suizos, el 10 de noviembre se produce la fuga del presidente.

El nuevo gobierno, que asume el 22 de noviembre con un programa de transición orientado a crear condiciones regulares para un nuevo acto electoral, abre un espacio de esperanza y credibilidad democrática que, no obstante, no logra plenamente sacudir al pueblo de su profunda decepción por la clase política, tornando incierto el panorama electoral y el futuro del país.

La coyuntura y la agenda indígena

Los múltiples destapes de la inmoralidad generalizada terminaron por dar la razón a una serie de reclamos que los indígenas habían venido haciendo durante los últimos años, muy especialmente los referidos a la manipulación política de los recursos estatales y de los fondos de los grandes proyectos de financiamiento multilateral, la enorme transcendencia de la corrupción estatal en los organismos públicos, en las fuerzas armadas y policiales y en el poder judicial, así como el ambiente generalizado de

Las consecuencias de la explotación indiscriminada del bosque son masivas.
Foto: Alejandro Parellada

inmoralidad en los niveles locales, a través del aparato organizado por Absalón Vásquez[1], el "Montesinos de la sociedad civil", a través de prefecturas, alcaldías, Consejos Transitorios o proyectos especiales.

El autoritarismo y la profunda crisis social han ofrecido un ambiente poco propicio a grandes avances de cara a propuestas a largo plazo que son las que caracterizan esta etapa del desarrollo del movimiento indígena peruano cuya agenda cuenta con temas como:

- las propuestas de gobernalidad local basadas en pactos civiles interculturales,
- los Planes de Vida[2],
- la propuesta de Ley Indígena o la regulación de instituciones como la consulta en asuntos claves como la exploración de hidrocarburos y minería o sobre la protección del conocimiento (prácticas e innovaciones),
- la implementación del Convenio 169 y de los sistemas de administración de justicia indígena, y
- el diseño de pautas de administración de áreas culturalmente protegidas (el Sira, la Reserva Amarakaere, Vilcabamba, Kubaim-Morona y otras).

Sin embargo, y a pesar de las profundas dificultades, el movimiento indígena peruano ha venido sorteando obstáculos para proteger sus derechos a nivel local, regional y nacional, en un ambiente enrarecido y hostil, donde el clientelismo y el chantaje eran las únicas ofertas estatales y donde los intereses indígenas han supuesto habitualmente un estorbo para la discreción necesaria en todo negociado público de los recursos naturales y de las partidas presupuestales.

A pesar de esto no han escaseado las oportunidades y los escenarios abiertos a la propuesta y a la iniciativa indígena ofrecidos desde los niveles centrales del gobierno, si bien esas ofertas nunca han llegado a consolidar espacios estables de concertación.

En ningún caso se ha podido controlar el trasfondo real tras de esas oportunidades y mucho menos el destino de los resultados de las consultas, por lo que la limitada apertura al diálogo nunca generó una base de confianza suficiente y no concluyó en resultados prácticos, excepción hecha de las relaciones establecidas con la Defensoría del Pueblo.

Los Municipios no han generado ese espacio democrático que se previó en el pasado año. En general, su rol se ha reducido al de un eslabón en la cadena de distribución de prebendas y cooptaciones, forzando su complicidad en la recepción de obras y programas parcial o totalmente imaginarios. Por su parte, las manipulaciones de voto o los escandalosos fraudes electorales contra los candidatos indígenas (en los municipios de Manseriche, Tahuania, Pastaza, Río Tambo, etc.) quedaron impunes.

Esta mujer es una "mashco piro" que solía vivir voluntariamente aislada. Luego de un accidente, ella y su hermana fueron obligadas a abandonar su grupo y viven ahora en una comunidad indígena donde también se han casado. Foto: FENAMAD

Con pocas variantes podría hablarse de los otros espacios de participación ciudadana cuyo desarrollo se había tomado como guía de líneas de trabajo para el período. Frente a un Estado inexistente, la concertación, obligatoriamente provisional e incierta, ha sido muy poco transcendente. Otro tema priorizado en el proyecto original era el de las relaciones bilaterales Perú-Ecuador que prometía abrir una amplia gama de oportunidades a la consolidación de los pueblos indígenas transfronterizos. De momento se trata de otro de esos temas planteados coyunturalmente y pronto desatendidos, no habiéndose plasmado en propuestas concretas a partir de las cuales generar acciones e iniciativas.

Por lo que respecta a los hidrocarburos, tras un largo período de negociaciones, los reclamos indígenas fueron decayendo por la propia dinámica del proceso. Son muy pocas las iniciativas exploratorias que continúan activas y, en esos casos, la población indígena ha logrado controlar la situación con eficacia. Son escasas las nuevas perforaciones y nulos los nuevos hallazgos. No obstante, pueden resurgir los problemas a corto plazo: la incondicional resistencia del pueblo *achual*[3] frente a las pretensiones de la Compañía ARCO, dio como resultado que esta compañía transfiriera sus derechos a OXY, una empresa con muchos menos escrúpulos, con fuertes vínculos políticos y con precedentes de riesgo para las comunidades y que ya ha comenzado a lanzar advertencias acerca de su decidida actitud de ingresar, pese a quien pese, al territorio concesionario.

Junto con estas dificultades contextuales, el movimiento indígena ha tenido un protagonismo fundamental en algunas regiones. Pasamos revista a continuación a algunos de los sucesos más relevantes del período.

El proceso en Madre de Dios

En el caso de Madre de Dios, los problemas mineros y forestales y las agresiones a la población indígena en aislamiento han de nuevo supuesto detonantes de una importante reacción indígena.

Frente a los graves problemas sociales del Departamento de Madre de Dios y la agresiva depredación forestal de las grandes compañías madereras, las organizaciones populares convocaron a todos los gremios del departamento a unificar sus fuerzas para plantear al gobierno en forma conjunta su plataforma de necesidades.

La convocatoria estuvo presidida por las organizaciones consideradas como las más fuertes de la región, la Federación Agraria departamental de Madre de Dios (FADEMAD) y la Federación Nativa de Madre de Dios, (FENAMAD).

Una primera acción de sensibilización logró unificar a todos los gremios, organizaciones de mujeres y estudiantes y ponerse de acuerdo sobre los propósitos de la convocatoria, concertándose una plataforma común que se dialogó con las autoridades locales, sin acogida alguna. Por lo que la asamblea regional declaró el Primer Paro Regional en el mes de agosto, al que asistieron mas de cinco mil personas, entre agricultores, población indígena y población en general.

La ciudad quedó paralizada durante tres días y hombres y mujeres indígenas, al igual que el resto de los pobladores, hubieron de soportar una dura e indiscriminada represión. La presencia de comisiones de Congresistas y Ministros permitió discutir y fundamentar la Plataforma de Lucha Regional, llegándose a diversos compromisos.

En cuanto a las necesidades planteadas por los indígenas, el gobierno se comprometió a respetar la decisión de la población indígena en aislamiento, a analizar minuciosamente el problema minero, a reconocer fórmulas de integración del control territorial indígena, tanto en los territorios comunales como en las áreas naturales protegidas, y a culminar la categorización definitiva de la Reserva Comunal Amarakaere.

Se estableció un plazo máximo de 10 días para dar salidas a los diversos petitorios o de lo contrario se entraría a un paro indefinido.

El Segundo Paro Regional, se llevó a efecto cumplido el plazo y se inició un paro indefinido que se prolongó desde el día 18 hasta el 26 del mes de septiembre, fecha en que el Gobierno dio salida a algunos pedidos, solucionando, entre otros, el problema administrativo de la extracción de madera.

El paro tuvo un apoyo masivo de la población. Una gran cantidad de contingentes policiales, trasladados especialmente de Lima, se enfrentó violentamente con los manifestantes, produciendo como resultado dos heridos de bala entre los campesinos y dos indígenas torturados, así como la detención de 120 manifestantes.

Por su parte, desde el mes de agosto del año 2000, las comunidades más afectadas por las actividades de los extractores auríferos en sus tierras iniciaron las acciones de desalojo de los mineros, agudizándose los enfrentamientos.

Pese a que se han realizado intentos de concertación en cuatro oportunidades, lamentablemente todas las reuniones terminaron en fracaso, al mantener los mineros una actitud inflexible y prepotente, liderados por los patrones mineros, quienes ocupan los cargos directivos de las organizaciones gremiales. Frente a estos hechos y la indiferencia de las autoridades, las comunidades han mantenido su decisión de no permitir el reingreso de los mineros a sus tierras.

En septiembre de 2000, FENAMAD tuvo la oportunidad de reunirse con el Viceministro de Minería en Lima, para tratar de buscar respuesta a los problemas mineros en las comunidades. En la reunión, el Viceministro de la administración anterior y su equipo técnico, así como la FENAMAD con su equipo, arribaron a un acuerdo de consenso para resolver el problema de la siguiente manera:

- Para evitar el otorgamiento de nuevas concesiones se emitiría un Decreto Supremo en el que se ordene la NO ADMISIÓN de nuevas exploraciones en las áreas que ocupan las comunidades.
- Para los casos de los mineros que se encuentran actualmente operando: dado que tienen derechos adquiridos otorgados por el Registro de Minería, se les realizará una inspección y auditoría ambiental, con el fin de verificar el cumplimiento de las obligaciones ambientales y el cumplimiento de las obligaciones previstas por la misma ley minera, tales como el acuerdo previo con el dueño de la tierra, o el pago de servidumbre. Si se verifica su incumplimiento, se aplicarían las sanciones de multa o cancelación de la concesión.

El Ministerio cumplió con tres comunidades, con la elaboración de la inspección y auditoría cuyo dictamen comprueba el incumplimiento de las obligaciones legales de los mineros. Los demás compromisos quedaron truncos debido al cambio de las autoridades gubernamentales.

Con el nuevo Gobierno de Transición, FENAMAD ha reiniciado las gestiones para continuar con su propósito de dar solución a este problema al más alto nivel de las autoridades del Gobierno, contando con el respaldo de las oficinas tutelares como la Defensoría del Pueblo y la SETAI (Secretaría de Asuntos Indígenas).

Por otro lado, existe mucho interés por parte de empresas madereras en extraer madera en el área de desplazamiento de las poblaciones indígenas en aislamiento, razón por la que han llegado a pedir al gobierno que declare dicha area como zona de extracción forestal permanente.

Sin embargo, en los últimos meses han venido suscitándose una serie de hechos que evidencian la presencia de las poblaciones indígenas aisladas, como el ataque que sufrió un grupo de pescadores en septiembre del 2000, que resultó en que un joven de 18 años de edad fue flechado en la nuca. Hechos como éste confirman la necesidad de restringir el acceso a la zona. Con ese fin, la FENAMAD ha realizado un estudio de delimitación territorial que viene siendo financiado por IWGIA y que se encuentra en su etapa final.

Paralelamente, continúan las presiones ante el gobierno para que se abstenga de otorgar concesiones forestales en el área. Asimismo, a través del proyecto Resguardo Territorial y Campaña de Defensa que se inició en octubre del 2000, se viene realizando la vigilancia de la zona y las correspondientes denuncias contra los madereros que continúan trabajando, a pesar de estar al tanto de los riesgos que existen en el área.

Pese a ello, las autoridades decretaron la suspensión de la veda de la caoba y del cedro en la zona, incrementándose el ingreso de madereros y otros extractores ilegales a las tierras de los indígenas aislados; esto ha causado que esta población indígena se defienda frente al temor de ser afectada por las amenazas de los foráneos, ocasionando un caso de herido de flecha entre los miembros de una de las brigadas que incursionaron dentro de sus territorios.

Finalmente, el 12 de febrero del 2001, huvo un enfrentamiento en la Comunidad de Santa Cruz con un grupo de indígenas aislados que dejó como saldo un número considerable de indígenas heridos y posiblemente siete muertos, de acuerdo a las versiones aún no confirmadas por la FENAMAD.

Los espacios de concertación

En base, principalmente, a fondos provenientes de organismos financieros multilaterales, se ha desarrollado un buen número de iniciativas de concertación que, a juicio de las organizaciones indígenas, no estuvieron, por lo general, orientadas por el propósito de dar solución a la problemática indígena.

Dentro de estos límites conviene destacar:

- El Convenio AIDESEP-Defensoría del Pueblo dirigido a la protección de derechos fundamentales de los pueblos indígenas.
- La Consulta sobre una agenda de iniciativas legales para presentar al Congreso de la República (concretadas por razones de tiempo en la Ley de Educación Bilingüe Intercultural y la de Justicia Indígena).
- La definitiva puesta en funcionamiento de Comisiones de Asuntos Indígenas en el poder legislativo y en el ejecutivo.
- Consultas legales específicas (como la del Régimen de Protección de los Conocimientos Colectivos de los Pueblos Indígenas o el Reglamento de la Ley Forestal).

Contrasta con esta apertura la sorpresiva promulgación de la nueva Ley Forestal. En este caso, y siendo una ley que afecta profundamente los intereses indígenas, no ha sido sujeta a consulta, excepto la consulta superficial que en su tiempo hicieron algunas ONGs sobre un texto que difiere sustancialmente del texto final oficial.

La Ley No. 27308 Forestal y de Fauna Silvestre es el producto final de una muy larga historia de marchas y contramarchas relativas a la modernización de un sector que, hoy por hoy, constituye uno de los más recalcitrantes en lo referente al control social. Los sucesos de Madre de Dios, denunciados en principio por la FENAMAD entre otras fuerzas populares, pusieron al descubierto un manejo mafioso de las concesiones al servicio de la depredación masiva de los bosques nacionales por compañías nacionales y extranjeras, garantizadas de impunidad por las autoridades regionales.

No obstante, la nueva Ley, saludada por algunos como la más moderna del Continente, no supone avances de importancia respecto a los derechos de los pueblos indígenas sobre su patrimonio territorial y, más bien, consolida la estatización de las decisiones al respecto. Si bien las Organizaciones Indígenas están intentando definir derechos operativos en el Reglamento de la Ley, la ambigüedad con la que se recogen en ella los derechos de los pueblos indígenas hace ver que, en todo caso, no se ha tratado de legislar para ellos sino por encima de ellos.

A juicio de muchos, la promulgación de esta ley, como las otras que forman el marco expropiador de los recursos naturales de los pueblos indígenas (la llamada Ley de Tierras y la Ley de Aprovechamiento de los Recursos Naturales), todas ellas inconsultas pese a su transcendencia, muestran la otra cara del "juego de las consultas" que, a la vista de sus resultados, podría entenderse como premeditadamente infructuoso.

Los sucesos de la Selva Central y el Decreto 15-2001-PCM

Una vez más, la población *asháninka* de la Selva Central es protagonista en el recuento de las luchas indígenas. La invasión masiva de San Ramón de Pangoa, considerada como estratégica para vencer definitivamente la resistencia indígena y dividir en dos su territorio tradicional, volvió a enfrentar poblaciones indígenas y colonos avalados por autoridades locales. El día 30 de enero de 2001 se produjo un intento de desalojo judicial de los invasores que, por el corto número de efectivos policiales, no tuvo éxito y dejó un número indeterminado de heridos. La retirada de los policías dejó a la población indígena de la Comunidad a merced de una turba enfurecida de colonos que intentó dinamitar el puente de San Ramón y apedreó a las autoridades judiciales y al personal de la Defensoría del Pueblo apersonados en la zona. El día 31, mil quinientos colonos, con ocho armas de fuego, ingresaron a la comunidad y redujeron a los ronderos[4] indígenas, incendiando tres viviendas y amenazaron con hacer desaparecer la comunidad.

Frente a estos hechos, acumulados a los ya producidos en dos décadas de sufrimiento y de genocidio, las organizaciones indígenas de la Selva Central emprendieron una marcha a Lima y desarrollaron una intensa campaña de cabildeo y difusión que obtuvo resultados de la mayor importancia, logrando plantear su problemática directamente ante ocho Ministros sectoriales y ante el nuevo Presidente de la República, Dr. Valentín Paniagua.

Como resultado, y reconociendo la obligación moral del país para con los Pueblos Indígenas, el Presidente establece el 14 de febrero, por Decreto Supremo 015-2001-PCM una Comisión Multisectorial de nivel interministerial para concertar con las organizaciones indígenas nacionales la solución a ocho puntos prioritarios en un plazo de 60 días y formular, en otros 120 días, propuestas integrales para garantizar la plena vigencia de los derechos constitucionales de los pueblos y comunidades indígenas y promover su bienestar.

Lo que se viene

Gracias a este transcendental e histórico logro organizativo, el período se cierra con un horizonte muy esperanzador que genera novedosos escenarios de diálogo real y efectivo entre el Estado y los pueblos indígenas. Escenarios impensables durante toda la pasada década de autoritarismo. Para muchos, puede ser un período lleno de oportunidades, por cuanto es cierto que, en muchos casos, se ha procurado incorporar al gobierno transitorio algunos de los más destacados elementos de la clase política y existe un ambiente general de "saneamiento" justiciero que podría propiciar soluciones a problemas que los pueblos indígenas vienen arrastrando durante todos estos años de manejo turbio del asunto público.

Con el pragmatismo que las caracteriza, muchas organizaciones se han aprestado a probar la oportunidad y preparar procesos de concertación con el aparato estatal transitorio en busca de soluciones estables a sus problemas. Es muy posible que esas concertaciones, entendidas como oportunidades coyunturales, concentren buena parte de la atención del movimiento indígena en los próximos meses al igual que la preparación de agendas para recibir a un nuevo gobierno.

Al final del período, el Movimiento Indígena se ha visto obligado a desarrollar urgentes cambios tácticos en todos los procesos de interlocución mantenidos con el aparato estatal. No se trata tan sólo de un cambio de gobierno sino de toda una revolución en los objetivos, los estilos, las expectativas y los procedimientos del gobierno central junto a la resistencia de los poderes locales a abandonar las cómodas posiciones obtenidas durante la dictadura.

El gobierno de transición, lleno de buenos propósitos y de gran simpatía popular pero limitado por las circunstancias, ha retomado conversaciones y gestiones en curso. La atipicidad de un período como el presente, y muy probablemente no será diferente el que viene a continuación, ha generado acelerones y frenazos, cambios de rumbo y reconstrucción de agendas a velocidades inusitadas. La transitoriedad del actual momento político (con un gobierno que no va a durar pero cuyo prestigio puede propiciar la consolidación de algunos logros transcendentes) obliga a las Organizaciones a estar muy atentas a las oportunidades y a distinguir entre logros perdurables y los que tan sólo son artificios de la coyuntura.

La cotidianidad, base sobre la que se construyen los procesos más sólidos, no es, hoy por hoy, como puede verse, el entorno natural del movimiento indígena del Perú.

Notas y referencias

[1] Un ex-aprista y el principal hombre de confianza de Fujimori. Fue el gran organizador de las "bases locales" del fujimorismo y, a través de uno de los partidos de la alianza oficialista, el "Vamos Vecinos", se encargó de la redistribución de los fondos sociales en las Provincias y Distritos de todo el Perú.

[2] En la concepción de AIDESEP, Planes de Vida son mecanismos de reflexión colectiva que intentan evaluar lo acontecido a un pueblo indígena durante los años del contacto con la sociedad nacional y que intentan fijar grandes líneas de acción para ese pueblo en perspectivas a largo plazo.

[3] El pueblo achual pertenece a la familia lingüística jibaroana y habita en la selva del norte peruano y sur ecuatoriano, mayormente en los ríos de la planicie de la cuenca del Río Pastaza.

[4] Fuerzas coercitivas comunales con fines únicamente de autodefensa.

BOLIVIA

Durante el año 2000 los campesinos y los pueblos indígenas experimentan que las políticas impulsadas por el gobierno en materia de distribución de tierras y recursos naturales, les niegan en la práctica sus derechos territoriales conquistados en la década anterior a partir de reformas constitucionales y legales. En este escenario, caracterizado por el recorte de los derechos, sólo queda como alternativa la movilización de la población para generar, a través de acciones de hecho, los espacios de negociación con los agentes gubernamentales.

La Guerra del Agua

Los habitantes de los valles se ven enfrentados a la Ley de Agua Potable y Alcantarillado Sanitario que, aprobada en octubre de 1999, abrió la puerta para la privatización del recurso agua, lo que efectivamente se hizo en el Departamento de Cochabamba, entregando en concesión las fuentes de las que se proveía el servicio de agua potable. Los usuarios tradicionales quedaron excluidos del derecho a acceder al recurso y las pequeñas infraestructuras construidas comunitariamente para proveerse este servicio pasaron a manos de la empresa, a la que en adelante le tendrían que pagar el suministro del agua, extraída de sus propias tierras y por sus propios métodos. A mediados del mes de enero, los diferentes sectores reunidos en la Coordinadora del Agua[1] bloquearon la ciudad de Cochabamba, con lo cual consiguieron que los sistemas de riego de las comunidades quedaran fuera de la intervención de la empresa concesionaria. Durante los primeros días del mes de febrero realizaron una toma de la misma ciudad, la que se denominó "la guerra del agua" por las confrontaciones violentas que se dieron con el Ejército y la Policía. Con esta toma se obtuvo del Gobierno el compromiso de concertar modificaciones a la Ley. Pero fue necesario una tercera manifestación en el mes de abril para que la Ley fuera efectivamente modificada y se anulara el contrato de concesión, dejando a salvo los derechos de los usuarios.

El bloqueo campesino

En septiembre de 2000, el movimiento campesino del altiplano y los cocaleros del Chapare bloquearon durante un mes las principales carreteras del país, dejando inmovilizado el eje central La Paz-Cochabamba-Santa Cruz, como reacción a las políticas gubernamentales y al modelo de desarrollo que los deja al margen de posibilidades de supervivencia en condiciones

Indígenas demostrando, Bolivia. Foto: Alejandro Parellada

La tercera marcha de indígenas y campesinos, junio de 2000. Foto: archivo de IWGIA

BEST COPY AVAILABLE

de dignidad. La prolongada acción hizo que el Gobierno suscribiera acuerdos en los que se comprometía, entre otras cosas, a modificar las principales leyes relativas a la tierra y los recursos naturales y a suspender definitivamente la construcción de bases militares en el Chapare para controlar el proceso de erradicación de cultivos excedentes de coca.

La Tercera Marcha Indígena y Campesina por la Tierra, el Territorio y los Recursos Naturales

Desde los primeros días del año, varias de las organizaciones indígenas demandantes de *tierras comunitarias de origen* (territorios indígenas) y algunas organizaciones regionales, entendieron que la consolidación de sus derechos reconocidos en la legislación nacional iba por un camino que conduciría irremediablemente a la eliminación de los mismos. Estos temores se expresaban en los siguientes hechos:

- La inexplicable demora en la promulgación de un nuevo reglamento para la correcta aplicación de la Ley del Servicio Nacional de Reforma Agraria o Ley INRA, que había sido concertado con las organizaciones.
- El Instituto Nacional de Reforma Agraria – INRA, responsable de la titulación de tierras, emitía y pretendía aplicar normas técnicas que facilitaban que terceros ilegales apostados en tierras indígenas consolidaran derechos en detrimento de sus legítimos propietarios.
- El Viceministerio de Asuntos Indígenas y Pueblos Originarios – VAIPO, a través de supuestos estudios técnicos de identificación de necesidades, disminuía sistemáticamente las extensiones que debían ser dotadas como territorios indígenas[2].
- La aprobación, al finalizar 1999, de un Decreto Supremo que convertía las antiguas explotaciones de goma y castaña en concesiones forestales, con cuya aplicación se consolidarían a favor de los barraqueros[3] grandes extensiones en el norte amazónico, a las que acceden miles de campesinos e indígenas para su uso y aprovechamiento tradicional.
- El arbitrario rechazo de tres recursos de inconstitucionalidad interpuestos ante el Tribunal Constitucional contra la resolución 098/99 del INRA, con la cual esta instancia del Poder Ejecutivo, arrogándose funciones legislativas, había establecido un proceso sumario y casi secreto para entregar a concesionarios forestales vastas áreas de tierras boscosas, eludiendo el procedimiento legal de saneamiento.

Estas medidas llevaban a que el proceso de titulación de tierras indígenas, comenzado en1997, no presentara resultados satisfactorios, a tal punto que las demandas territoriales en la práctica no eran viables. Ante esta situación, los pueblos indígenas comenzaron una estrategia de acumulación de fuerzas con las organizaciones sociales afines, campesinos y colonizadores de la zona oriental de Bolivia, quienes igualmente afrontaban graves problemas relacionados a la tenencia de la tierra.

En abril, las organizaciones anunciaron al Gobierno sus demandas y advirtieron que comenzarían una movilización hasta lograr soluciones efectivas a sus principales problemas. El Gobierno se apresuró entonces a expedir el nuevo Reglamento de la Ley INRA pero, tal como lo temían las organizaciones, algunos de sus artículos habían sido modificados para consolidar por esta vía las medidas administrativas enunciadas que facilitaban el reconocimiento de propiedades a particulares y el otorgamiento de grandes extensiones en concesiones forestales.

El Gobierno no dio otras respuestas. La marcha se inició el 28 de junio en el Departamento de Pando, donde varias centenas de campesinos e indígenas se desplazaron desde sus comunidades hasta la ciudad de Riberalta. Allí se sumaron la Central Indígena de la Región Amazónica de Bolivia (CIRABO), la Federación de Trabajadores Campesinos de la Provincia de Vaca Díez y la Central Campesina de Guayaramerín y juntos se desplazaron hasta Trinidad. Llegaron a Santa Cruz el 6 de julio donde se concentraron con delegaciones de indígenas y campesinos, organizados en la Coordinadora de Pueblos Étnicos de Santa Cruz - CPESC y en las Federaciones de Trabajadores Campesinos y de Colonizadores de este Departamento. Más tarde se sumaron a la Tercera Marcha las Federaciones Campesinas del Beni y de la Provincia del Gran Chaco tarijeño y las organizaciones demandantes de tres territorios indígenas del Departamento del Beni (Multiétnico - TIM, Isiboro Sécure – TIPNIS, y Mojeño Ignaciano - TIMI).

Antes de que la Marcha continuara su ruta desde Santa Cruz, el Director Nacional del INRA y el Viceministro de Asuntos Indígenas (VAIPO), se apresuraron a ofrecer pequeñas cosas para que los indígenas desistieran de movilizarse. Pero estos continuaron exigiendo soluciones definitivas a sus demandas.

En la ciudad de Montero (45 Km al norte de la ciudad de Santa Cruz), arribaron 6 Ministros de Estado dispuestos a negociar las demandas de los marchistas. El diálogo, que llevó dos días hasta altas horas de la madrugada, dio sus frutos y las organizaciones lograron acuerdos concretos para solucionar sus demandas, enviadas dos meses antes al Presidente de la República.

El hecho de que el Gobierno propiciara el diálogo y aceptara sin mayores reparos las soluciones propuestas por las organizaciones, probó una vez más que sólo bajo medidas de presión se hacen efectivos los derechos de los sectores indígenas y rurales.

Logros obtenidos por la Tercera Marcha

Los logros de la Marcha fueron significativos. Se anularon el Decreto que convertía las barracas en concesiones forestales y la Resolución Administrativa que facultaba al INRA a declarar tierras disponibles para concesiones, acordándose además, que las casi 3.800.000 hectáreas que ya estaban para otorgarse en concesión se destinarán en su lugar a la dotación de indígenas y campesinos. En el Decreto que modificó el nuevo Reglamento de la Ley, se limitaron las posibilidades para que el INRA continuara destinando tierras a concesiones forestales sin antes realizar el proceso de saneamiento de la propiedad agraria, para lo cual se instituyó norma expresa.

Las modificaciones al nuevo Reglamento de la Ley INRA están dirigidas a garantizar la tramitación legal del proceso de saneamiento de tierras indígenas e impedir la adjudicación a particulares de tierras ociosas o adquiridas ilegalmente dentro de los territorios indígenas. Con esto se solucionó uno de los principales problemas que llevaron a los indígenas a marchar, pues la aplicación de normas técnicas emitidas por el INRA conducía a que propiedades de hasta 2.500 hás. fueran consolidadas a terceros a pesar de que no cumplieran con los requisitos legales y constitucionales, comportando grandes reducciones a los territorios indígenas en todo el país, y en algunos casos, su completa desaparición. Las normas técnicas, abiertamente ilegales, habían sido impugnadas por las organizaciones afectadas y, en respuesta, el INRA paralizó los respectivos procesos de saneamiento, como ocurrió con el proceso para la titulación de Monte Verde, demandado por el pueblo chiquitano. Con la modificación al Reglamento, dichas normas técnicas automáticamente desaparecieron y los procesos suspendidos pudieron continuar.

También se eliminó la facultad que tenía el VAIPO para recomendar las extensiones a ser dotadas a indígenas y se redujeron los plazos para culminar los procesos.

Avances en el proceso de titulación de tierras indígenas

En solo 15 días se logró lo que parecía imposible después de cuatro años de infructuosos procesos de saneamiento de la propiedad agraria, que habían consumido importantes sumas de dinero aportadas por la cooperación internacional.

A pesar de haber trascurrido casi cuatro años de aprobada la Ley INRA, que ordenaba la titulación de las 16 demandas territoriales en un plazo de 10 meses, hasta entonces sólo habían sido tituladas 657.736 hás. correspondientes a la demanda del pueblo *ayoreo* y una parte de la demanda del pueblo *guarayo*[4]. La marcha logró la dotación de los territorios indígenas Multiétnico II en la Amazonía norte, Lomerío en la Chiquitanía y Yuracaré en el trópico cochabambino, por una extensión de 832.735 hás. Otras 1.077.115 hás. están próximas a ser dotadas, entre las que se cuenta el territorio de Monte Verde.

Territorio Indígena Multiétnico II

El Norte Amazónico fue uno de los principales protagonistas de la Marcha. La movilización en esta región se caracterizó por la fuerte alianza entre indígenas y campesinos, que fue estratégica para derrotar la decisión del Gobierno de entregar en concesiones forestales la casi totalidad del departamento de Pando y la parte norte de los departamentos de Beni y La Paz. Según proyecciones del INRA para diciembre de 1999, de las 441.000 hás. demandadas por el Territorio Multiétnico II, a los "barraqueros" les corresponderían alrededor de 156.000 y a los campesinos 45.000. Coincidente con estas cifras, en un informe preliminar del Estudio de Necesidades el VAIPO recomendaba la dotación de 236.000 hás. Una vez iniciado el diálogo, el estudio fue modificado recomendando la titulación de 407.000 hás.

Luego de la marcha, revisados los derechos de terceros al amparo de las nuevas normas, el INRA dictó la resolución de dotación y titulación del Territorio Multiétnico II por una extensión de 391.000 hás., lo que indica que la superficie que se proyectaba adjudicar a barraqueros se redujo a menos de 6.000 hás., puesto que a los campesinos se les reconocieron las 45.000 hás. proyectadas. Pero hizo falta dos movilizaciones más: un bloqueo de caminos por varios días en el mes de diciembre, realizado en coordinación con los transportistas, para que se emitieran las resoluciones correspondientes a terceros, requisito previo para su titulación definitiva; y un bloqueo más en el mes de febrero hasta obtener el Título Ejecutorial, el que fue emitido el día 23 del mismo mes por 289.000 hás. La disminución se debe a que un grupo de 36 terceros impugnó la Resolución de Dotación en una parte correspondiente a 102.000 hás.

Con esto, los pueblos indígenas *esse ejja*, *tacana* y *cavineño*, con una población aproximada de 4.000 habitantes, habrán garantizado su propiedad territorial. En el momento, ya han organizado un Comité de Gestión y Administración de su territorio.

Territorio Indígena Chiquitano de Monte Verde

El proceso para la titulación de esta demanda territorial había estado paralizado durante más de medio año, como respuesta del INRA a la impugnación que presentaron las organizaciones demandantes contra las normas técnicas emitidas por el mismo Instituto para valorar predios de terceros en el cumplimiento de la función económico-social y la legalidad de sus títulos. La impugnación buscaba evitar que su territorio fuera entregado a los terratenientes de la región.

Restituida la legalidad al proceso de saneamiento con la modificación al Reglamento de la Ley, el proceso se reanudó. Teniendo en cuenta que los muchos intereses ilegales que conspiraban contra su titulación ya no contaban con el amparo de las mencionadas normas técnicas, el proceso podría culminar satisfactoriamente en los plazos acordados con el Gobierno, pero el INRA dilató su culminación y lo abrió a un inesperado e inconveniente proceso de conciliación con terceros.

El 29 de septiembre, el INRA emitió la Resolución de Dotación, pero sin las resoluciones por cada uno de los predios de terceros y con una información geográfica incompleta y errada. La extensión que por esta Resolución se dotaba a los indígenas, además de restar las áreas que legalmente correspondían a terceros, restó también las correspondientes a concesiones forestales, 120.000 hás. Así, de casi 1.060.000 hás. demandadas, dotaba sólo 881.000. La decisión de consolidar las concesiones forestales, no obstante ser contraria a disposiciones expresas de la Ley y a una reciente sentencia de la Corte Suprema de Justicia[5], fue ratificada por el Ministro de la Presidencia, apartándose además de los compromisos suscritos con la Tercera Marcha.

Las protestas de las comunidades y organizaciones demandantes hicieron que el INRA suspendiera la ejecución de dicha Resolución. Para convencer a las organizaciones de aceptar la consolidación de las concesiones forestales, el INRA ofreció compensar todas las áreas sustraídas, las de terceros y las de concesiones, de tal manera que la dotación final se haría por la superficie demandada de 1.059.964 hás. Pero, a cambio, convocó a todos los terceros a una audiencia de "conciliación", extraproceso, fomentando la presión de éstos hacia los indígenas demandantes para aumentar sus propiedades, lo que efectivamente lograron en casi 30.000 hás.

El compromiso entre el INRA y las organizaciones demandantes de Monte Verde se firmó en noviembre. Al finalizar el año, sin embargo, no se había emitido la nueva Resolución de Dotación, lo que posibilitó que un recurso interpuesto por los terratenientes contra la resolución emitida en septiembre prosperara ante el Tribunal Agrario Nacional, paralizando de nuevo el proceso. Posteriormente, los terceros presentaron un recurso de inconstitucionalidad contra varios artículos del Reglamento modificado, con la pretensión de que se rehaga la parte final del proceso de saneamiento. En la actualidad, la titulación de Monte Verde se encuentra a la espera de la decisión que adopte el Tribunal Constitucional, quedando pendiente la titulación de una superficie de 851.000 hás. dentro del área demandada y 208.964 hás. más fuera de ésta.

Territorio Indígena Chiquitano de Lomerío

A pesar de todos los problemas técnicos que se estaban evidenciando, el saneamiento del territorio de Lomerío fue concluido a mediados del mes de junio. Hasta ese momento, el VAIPO no había presentado el correspondiente Estudio de Identificación de Necesidades Espaciales, lo que hizo durante las negociaciones de la marcha, recomendando la dotación de 384.000 hás., que sobrepasa en 84.000 hás. el área demandada.

Por su parte, el INRA se comprometió a emitir la Resolución de Dotación durante los primeros días de agosto, pero esto recién se hizo el 20 de octubre de 2000, por una superficie disponible de 275.000 hás. Durante este lapso intentó instalar un proceso de "conciliación", como lo hizo con Monte Verde, pero la dirigencia y las comunidades demandante reaccionaron con firmeza, evitando la apertura del mismo.

Dado que el área de dotación es inferior a la superficie recomendada por el VAIPO, las comunidades han solicitado ya la compensación por el faltante, para lo cual han identificado áreas disponibles, precisamente entre las declaradas previamente por el INRA para concesiones y que el Gobierno, con motivo de la Marcha de julio, se comprometió a dotar a indígenas y campesinos. Una vez culmine la titulación del área dotada, se deberá seguir el trámite de la compensación, el cual no debe presentar mayores obstáculos.

Territorio Yuracaré

El proceso de saneamiento y titulación del territorio Yuracaré ha sido, si se quiere, el menos conflictivo. El saneamiento se hizo con equipos de las respectivas zonas y se contó con una eficiente labor del técnico indígena. Es de destacar que en esta región los indígenas no fueron empatronados y han mantenido un amplio control sobre su territorio. Los pocos "terceros" no indígenas asentados, aceptaron la titulación a favor del pueblo *yuracaré* conservando ellos sus áreas de ocupación en condición de comunarios.

A pesar de que el VAIPO recomendó la dotación de casi 22.000 hás. menos a las demandadas, el INRA sobrepasó esta recomendación titulando la totalidad de la demanda por 244.335 hás. El título ejecutorial fue entregado formalmente en el mes de octubre.

Las primeras demandas territoriales indígenas (TIM-TIMI-TIPNIS)

Las primeras demandas territoriales del movimiento indígena boliviano fueron reconocidas mediante decretos presidenciales entre 1990 y 1992, pero en 10 años no se había iniciado el proceso de saneamiento para su titulación definitiva y no se observaba ninguna perspectiva de que éste fuera a realizarse. El Territorio Indígena y Parque Nacional Isoboro Sécure (TIPNIS), el Territorio Indígena Multiétnico (TIM) y la nueva demanda territorial de los pueblos indígenas *moxeño-ignacianos* (TIMI), habían sido relegadas desde tiempo atrás, en medio de conflictos por el acceso a los recursos del bosque (madera) y empresas petroleras.

Las organizaciones demandantes de estos territorios, decidieron plegarse a la marcha que ya había partido. Las difíciles condiciones climáticas obstaculizaron a los comuneros la salida de sus territorios por lo cual sólo alcanzaron la marcha la noche en que se discutía el texto definitivo del convenio que más tarde se suscribió con el Gobierno.

A pesar de su arribo a último momento, las organizaciones del Departamento de Beni incorporaron al convenio parte de sus demandas. Lograron que se emitieran la resolución determinativa con la que se inicia el proceso de saneamiento para los territorios Multiétnico y Mojeño Ignaciano (TIM y TIMI) y la medida precautoria de inmovilización para prevenir nuevos asentamientos, dotaciones o adjudicaciones a personas ajenas a los demandantes.

En el Territorio Indígena y Parque Nacional Isiboro Sécure, TIPNIS, se concluyó el saneamiento sobre un área de 30.000 hás. cuya totalidad pretendían terceros. Al final, a las comunidades les fueron consolidadas un poco más de 24.000 hás. y éstas guardan la expectativa de que su demanda (1.236.296 hás.) se consolide en su totalidad, tomando en cuenta su doble categoría de parque nacional y territorio indígena. Pero su riqueza forestal y en biodiversidad lo hace apetecible para terratenientes, traficantes de tierra y de madera y explotadores de recursos naturales. A pesar de que el INRA cuenta con recursos para el saneamiento de dos polígonos más, no lo ha incorporado en su cronograma.

El día después de la Marcha: Las propuestas regresivas

Ya se ha reseñado que muchos de los acuerdos obtenidos por la Tercera Marcha Indígena y Campesina se han hecho efectivos. Otros en cambio no se han concretado.

El Viceministerio de Asuntos Indígenas y Pueblos Originarios, convertido en Ministerio luego de los acuerdos suscritos en octubre pasado entre el Gobierno y el movimiento campesino, ha hecho caso omiso de la modificación al Reglamento de la Ley que eliminó su facultad de recomendar las superficies que deben ser dotadas a las comunidades indígenas y continúa emitiendo la recomendación, con recortes sustanciales a las superficies demandadas. Los territorios ahora afectados son los demandados en la Amazonía sur.

Pero además de este incumplimiento, se ha iniciado todo un proceso de contrarreforma, para revertir las modificaciones legales obtenidas por la marcha y promover nuevas normas dirigidas a recuperar un tratamiento preferencial para algunos sectores en los procesos de titulación de tierras. Primero, un Proyecto de Ley que incorpora los beneficios del anulado "decreto barraquero" fue presentado para su trámite en el Parlamento antes de finalizar el año.

Luego fue presentada a la Comisión Agraria Nacional (CAN) una propuesta para regular la "carga animal" aplicable a los predios con actividad ganadera en los procesos de saneamiento y titulación de tierras. De acuerdo con la propuesta, a los ganaderos les adjudicarían por cada unidad animal[6] extensiones desde 6 hás. en el trópico húmedo hasta 47 hás. en el Chaco.

Finalmente, fue presentado, también a la CAN, un proyecto de Decreto que propone revertir todas las modificaciones al Reglamento de la Ley INRA. Además de devolverle la facultad al Ministerio de Asuntos Indígenas para recomendar las superficies de dotación a indígenas, autoriza nuevamente al INRA a declarar tierras fiscales con destino a concesiones forestales, restituye disposiciones para favorecer la consolidación de predios a terceros que no poseen derechos y propone cambiar la unidad mínima de dotación para familias extractivistas en el Norte Amazónico. Esta última medida despejaría el camino para la aplicación de la Ley "barraquera", de aprobarse por el Parlamento el Proyecto a que se ha hecho alusión.

Este proceso de contrarreforma se enmarca en la coyuntura actual que se vive en Bolivia, en la que los empresarios han tomado el escenario de la opinión pública nacional demandando al Gobierno medidas específicas para atenuar la grave crisis económica que afecta particularmente al sector agropecuario.

De aprobarse y dar aplicación a las anteriores propuestas normativas, las zonas ganaderas del país se legalizarían a los ganaderos, la Amazonía norte se entregaría a los barraqueros y los bosques a los madereros, y no quedarían tierras para indígenas, campesinos y colonizadores pobres, extendiendo y consolidando la excesiva concentración de la propiedad agraria y la secular pobreza de las comunidades rurales.

Las organizaciones están atentas a lo que pueda suceder. Al finalizar la Tercera Marcha las organizaciones sellaron el compromiso de continuar la lucha conjunta por la defensa de sus derechos y ya han anunciado nuevas movilizaciones para los primeros meses del año.

Notas y referencias

[1] Bajo este nombre se agruparon los campesinos regantes, fabriles, obreros, transportistas y comités cívicos urbanos y rurales del Departamento de Cochabamba.

[2] De acuerdo con los datos oficiales, en cifras globales, de un total de 11.047.988 hás. inmovilizadas como tierras indígenas en proceso de saneamiento, el VAIPO recomendó la dotación de 8.401.484, es decir, el 24% menos.

[3] Con este nombre se bautizó a los propietarios de las antiguas "barracas", lugares que funcionaban como sitios de acopio y procesaamiento de la castaña y goma recolectadas. Según información del propio INRA, al inicio del año 2000, con fundamento en el D.S. 25532, 240 barraqueros habían solicitado un total de 3.400.000 hás. como concesiones forestales. (Nota del traductor)

[4] Entre octubre y diciembre del año 99, se dotaron cuatro territorios ayoreos con una extensión total de 244.736 hás., y un polígono de 413.000 hás. del territorio Guarayo, de una superficietotal de 2.205.369 hás. .

[5] En el mes de mayo la Corte Suprema de Justicia emitió la sentencia que puso fin a las impugnaciones presentadas por las organizaciones indígenas en 1998 por el otorgamiento de concesiones forestales dentro de sus territorios, indicando que las concesiones deben ser reducidas en las extensiones que sean necesarias para la dotación a indígenas.

[6] Equivale a 400 kg, el peso promedio de una res adulta.

PARAGUAY

Contexto sociopolítico

A partir de los sucesos conocidos como el *Marzo Paraguayo de 1999* (que comprende: el asesinato del Vicepresidente Argaña, 7 muertos y centenares de heridos en manifestaciones públicas, y el juicio político y renuncia del entonces Presidente Raúl Cubas), surge el Gobierno de Unidad Nacional, liderado por el Partido Colorado e integrado por los otros dos partidos políticos más importantes. Las expectativas de cambio tras la aguda crisis política y social se han visto cada vez más defraudadas por su desempeño.

Dicho gobierno sufrió varias composiciones y recomposiciones; el Partido Liberal, por ejemplo, se retiró del mismo en el primer semestre del 2000 para luego volver a integrarlo, ganando las elecciones a la vicepresidencia en agosto del mismo año.

La crisis de los actores políticos repercutió en los actores sociales, que consiguieron pocas respuestas a sus demandas. El déficit del erario público fue progresivamente aumentando al punto de que el gobierno, a finales del año 2000, no tenía fondos para afrontar gastos ordinarios. A partir de esto, los ajustes estructurales, tan en boga en los demás países latinoamericanos en los 90, fueron reclamados por varios sectores industriales y comerciales como la fórmula para rectificar la situación. El gobierno y la clase política se han hecho eco de esta postura y se han tomado varias medidas para emprender la llamada "Reforma del Estado", que en principio contempla privatizaciones de empresas públicas, aumento de precios de servicios básicos, reducción y/o eliminación de gastos públicos, etc.

Organismos como el Instituto Paraguayo del Indígena (INDI), han sido incluidos entre las entidades a ser reformadas o eliminadas – por su excesivo tamaño, corrupción y escasa productividad social. Probablemente ninguna institución del Estado podría pasar una prueba de efectividad y transparencia, pero indudablemente ciertos recortes, a criterio del gobierno, tienen menor costo político conforme a quienes afectan.

Una política indigenista de la negación

Si bien a inicios del 2000 la presidenta del INDI , la Sra. Leni Pane de Pérez Maricevich, contaba con experiencia indigenista, su administración fue desacertada y negativa para los intereses de los pueblos indígenas. Esta gestión se inició con un recorte presupuestario (ver más adelante), el cual fue asumido como un condicionante importante pero no absoluto por parte de la Sra. Pane. No obstante, 2/3 de los escasos fondos para restitución de tierras se malversaron en la compra de tierras sobrevaluadas. A esto se sumó el manejo arbitrario de la institución lo que le valió la oposición del Consejo de dicho instituto. Los conflictos internos del INDI trascendieron este ámbito, y el Poder Ejecutivo buscó zanjar los descontentos con la remoción de la Sra. Pane y su reemplazo por la Sra. Olga Rojas de Báez, a la sazón miembro del Consejo en desacuerdo.

La Sra. Rojas, la octava presidenta del INDI desde el inicio de la transición paraguaya (1989), asumió su cargo el 17 de septiembre del 2000, bajo la promesa de defender los territorios indígenas, pelear por un presupuesto justo y fomentar el autoabastecimiento de las comunidades. Sin embargo, sus buenas intenciones iniciales e inclusive su abierto apoyo a algunos casos conflictivos no han aportado nada para un avance de la situación indígena.

Para comprender la actual política indigenista del gobierno, se debe mirar más allá de los cambios de administración del INDI y tener en cuenta los siguientes indicadores: los recortes presupuestarios para compra de tierras de los años 2000 y 2001; la no-aprobación de un pedido de reprogramación presupuestaria para compra de tierras al Ministerio de Hacienda hecho en mayo del 2000; el rechazo de expropiaciones de reivindicaciones territoriales históricas en el Parlamento; la previsión de fondos para el funcionamiento institucional del INDI sólo hasta junio del 2001; y finalmente, la presentación por parte de la Secretaría de la Reforma del Poder Ejecutivo, de un anteproyecto de ley de cambio de la Ley 904/81, considerado inconstitucional y contrario a los derechos indígenas, que deberá ser tratado por el parlamento en marzo próximo.

En primer término, la asignación de fondos para compra de tierras reivindicadas por los pueblos indígenas fue reducida en más del 50% del 1998 al 1999, en un 84% de 1999 al 2000, y **en un 40% del al 2001,** quedando reducida a un monto de aproximadamente 400.000 dólares americanos al cambio actual (con esto se puede resolver apenas el 1% de las reivindicaciones territoriales vigentes). Es decir, los últimos recortes (2000-2001) constituyen más bien el término de una serie que tiende a la desaparición efectiva del INDI.

El rechazo y retiro de varios proyectos de expropiación de tierras a favor de comunidades indígenas (ver más adelante) por ambas cámaras, señalan que el Parlamento no ha tenido reparos en violar flagrantemente los mandatos constitucionales y legales de restitución territorial a los pueblos indígenas. En contra de estos reclamos la Asociación Rural del Paraguay (ARP), los ganaderos afectados y políticos afines a sus intereses, en alianza con medios de comunicación, realizaron una campaña de deslegitimación de los reclamos territoriales y sus fundamentos, agraviando a las organizaciones aliadas de los indígenas y presentando a los latifundistas como víctimas.

Conforme a lo contemplado en el proyecto de ley de la Secretaría de la Reforma, el INDI deberá ser sustituido –en teoría desde julio del 2001- por una Secretaría de Asuntos Indígenas de menor estatus administrativo. Así también se estipula en este proyecto el traspaso de recursos humanos y financieros a las gobernaciones y la reducción de la base mínima de tierras exigible al Estado para asegurar la supervivencia de las familias indígenas.

Además de estos indicadores negativos, existen otras situaciones de similar gravedad: la migración de los indígenas a las ciudades -más bien a sus basurales- por el despojo y/o la inseguridad de sus tierras; la explotación laboral; la venta de tierras privadas a la Secta Moon que afecta a territorios de pueblos indígenas del Alto Paraguay (e inclusive a la mitad de un Municipio nacional); la amenaza de megaproyectos indiferentes o excluyentes de los derechos e intereses indígenas, como el proyecto de "Corredores de Integración" del Banco Interamericano de Desarrollo (BID), el Proyecto de Desarrollo Sustentable del Chaco (PRODECHACO), la Hidrovía y otros. Todos estos son fenómenos y circunstancias que señalan el deterioro de las condiciones de vida de los indígenas.

Finalmente, frente a una perspectiva de violación generalizada de los derechos de los pueblos indígenas por parte del Estado, los indígenas han aumentado su participación en la esfera pública expresando cada vez con mayor claridad y firmeza sus reivindicaciones a través de distintas iniciativas organizativas y ante diversas instancias, más allá del ámbito de los líderes tradicionales. Entre ellas se pueden citar a la *Coordinadora de Líderes del Bajo Chaco,* la *Asamblea de Pueblos Indígenas,* la *Organización Nacional Aborigen,* la *Unión de Comunidades Indígenas de la Nación Yshyr* (UCINY) y, especialmente por su novedad y característica distintiva, dos movimientos políticos en el Chaco. El primero en organizarse fue el *Movimiento Indígena 19 de Abril,* que realizó el lanzamiento de su Consejo Político Religioso el 12 de octubre del 2000 en el departamento de Presidente Hayes; y el *Movimiento 11 de Octubre,* cuyo asiento es el departamento de Boquerón pero que aún no ha sido lanzado oficialmente. Ambos movimientos están integrados por personas de diversos pueblos indígenas.

La Coordinadora de Líderes del Bajo Chaco ha denunciado reiteradas veces a la administración de la Gobernación del departamento de Presidente Hayes por malversación de fondos y la manipulación de indígenas en sus acciones destinadas a los mismos. La UCINY logró obtener acuerdos con el gobierno para tener el acopio exclusivo de pieles de yacaré (caimán) y así evitar la explotación en manos de acopiadores no indígenas. El Movimiento Indígena 19 de Abril logró amplio destaque en su lanzamiento y sus integrantes alegan buscar una política indígena más allá del electoralismo tradicional.

Reivindicaciones territoriales indígenas

A pesar de un marco jurídico claro y favorable para la restitución territorial a los pueblos indígenas y de la relativa sencillez de su solución en términos financieros y políticos, el Estado no ha avanzado con relación a esto en los últimos años, por el contrario, tiende a la simple negación del problema. Hoy, por ejemplo, los pueblos indígenas chaqueños reivindican apenas el 3% de su territorio (en cifras redondas unas 750.000 hectáreas) y los de la región oriental menos de un 1/4 de esta extensión, cuya adquisición de manos de los particulares que las detentan no debería costar más de 50 millones de dólares americanos.

A modo de ejemplo, cabe aquí citar hechos recientes y relevantes que constituyen una muestra del estado de violación generalizada de los derechos territoriales indígenas:

El proceso de recorte del presupuesto del INDI para compra de tierras, la desaparición del mismo y la posible creación de un órgano indigenista estatal inconstitucional

El proyecto de ley de la Secretaría de la Reforma constituye la etapa final de la política de achicamiento del INDI, y busca claramente revertir los logros alcanzados en materia jurídica por los pueblos indígenas y sus aliados. En dicho proyecto, por ejemplo, se reduce la cantidad mínima de hectáreas que el Estado debe restituir a cada familia indígena (de 100 a 50 hectáreas en el Chaco, y de 20 a 10 en la Región Oriental), lo que por un lado contradice la propia Constitución Nacional cuando habla de la restitución de tierras a los pueblos indígenas *"en calidad y extensión suficientes para la conservación de sus formas peculiares de vida"* (Artículo 64) y por el otro busca legitimar la situación actual de incumplimiento de la exigencia mínima de restitución territorial.

La aprobación y/o adquisición de tierras no reivindicadas o con irregularidades en cuanto a su tramitación

Un ejemplo constituye el caso de Paso Itá S.A., unas 1.350 hectáreas ubicadas en el distrito de Horqueta, departamento de Concepción. La Sra. Pane ordenó dos pagos por estas tierras al Ministerio de Hacienda por un total de Gs. 1.000 millones (U$S 280.000). El costo por hectárea aprobado por el INDI fue 7 veces superior al establecido por el Instituto de Bienestar Rural (IBR) para tierras de la zona.

El rechazo del Parlamento Nacional de proyectos de expropiación de reivindicaciones territoriales indígenas

A nivel parlamentario se han cometido las arbitrariedades y violaciones más significativas teniendo en cuenta la investidura de esta instancia y las consecuencias de las posiciones y decisiones adoptadas por los senadores y diputados.

En principio, cabe citar el ejemplo de las comunidades de Xakmok Kásek (10.700 hectáreas) y Sawhoyamaxa (14.404 hectáreas). Ambas presentaron sus reclamos al parlamento en junio de 1999, luego de 9 y 8 años de tramitación administrativa inútil por la intransigencia de los propietarios para vender las tierras reclamadas. A partir de entonces se sucedió un sinnúmero de hechos vejatorios para ambas comunidades: sólo un grupo de los miembros de la comisión visitó las comunidades en una primera instancia; casi un año después y debido a la manifestación de las comunidades en Asunción, la Comisión de Reforma Agraria emitió un dictamen favorable sobre dichos casos y luego, a raíz de la mentada campaña y del lobby en contra, encabezado por los ganaderos afectados, se decidió postergar el tratamiento de los casos y realizar una segunda visita.

Durante la misma, los indígenas no tuvieron tiempo de plantear sus inquietudes y los parlamentarios dieron por ciertas las argumentaciones de los ganaderos. Posteriormente, la comisión antedicha expidió otro dictamen, esta vez por el rechazo en mayoría (cambiando varios miembros radicalmente su postura inicial) y finalmente el Senado rechazó ambos pedidos el 16 de noviembre de 2000.

Otros dos proyectos de expropiación, el de los *ayoreo totobiegosode* (78.000 hectáreas) presentado en la Cámara de Senadores y el de los *enxet de Yakye Axa* (18.186 hectáreas) presentado en la Cámara de Diputados, tuvieron que ser retirados por contar con dictámenes negativos.

Falta de medidas gubernamentales preventivas y disuasivas

El gobierno no ha tomado medidas preventivas y disuasivas para impedir la ocupación por parte de campesinos pobres de tierras indígenas aseguradas o en proceso ni para defender el hábitat indígena de la depredación en manos de terceros.

La emigración se debe a que las tierras, principalmente del pueblo *mbya guaraní* del departamento de Caaguazú, fueron invadidas por campesinos sin tierra o madereros inescrupulosos, alentados a su vez por operadores del Partido Colorado. La Policía y el Ministerio del Interior han sido renuentes a hacer respetar las medidas judiciales que protegen las tierras indígenas afectadas y a aplicar órdenes de desalojo en contra de los ocupantes ilegales.

Fotos: Ed Greevy

BRASIL

Un año tumultuoso para los pueblos indígenas de Brasil

El año 2000 fue un año tumultuoso para los pueblos indígenas de Brasil. El gobierno de Fernando Henrique Cardoso demostró no ser capaz ni estar dispuesto a suministrar soluciones efectivas para garantizar a los pueblos indígenas una existencia segura y digna en la sociedad brasileña. El actual retraso del proceso de demarcación, debido a las actuales Investigaciones del Comité Parlamentario (ICPs) de la FUNAI y de las ONGs en Brasil así como la represión militar contra manifestaciones indígenas legales, también señalan en la misma dirección. Por otro lado, la movilización generada como consecuencia de la marcha indígena en abril contra la conmemoración oficial de los 500 años de Brasil ha fortalecido a las bases del movimiento indígena. También tendría que reconocerse que la población indígena de Brasil está aumentando de nuevo y que nuevos programas internacionales para la protección de tierras indígenas como el Proyecto para la Protección de las Tierras y Poblaciones Indígenas de la Amazonía Legal (PPTAL), una iniciativa financiada por los países G7, han otorgado nueva fe a los líderes indígenas con respecto a que el proceso de demarcación avanzará a pesar de la resistencia oficial.

La política indigenista y su crisis permanente

La designación de Carlos Federico Marés como nuevo presidente de la Fundación Nacional del Indio (FUNAI) en noviembre de 1999, planteó esperanzas de una política más justa y pro-indígena. Marés declaró que sólo asumiría el cargo con la condición que la reserva indígena Raposa/Serra do Sol, entre otras, fuera ratificada inmediatamente. Durante los primeros meses de su presidencia elaboró una propuesta para un nuevo Estatuto del Indio, la cual fue entregada a las organizaciones indígenas durante sus protestas contra las conmemoraciones de los 500 años de Brasil. Simpatizando con las protestas indígenas, se declaró a sí mismo en oposición a la conmemoración oficial del aniversario de los 500 años del "descubrimiento" de Brasil, y finalmente renunció como reacción a la violenta represión, el día de la conmemoración, por parte de la policía militar (PM) de la marcha indígena hacia Porto Seguro. Fue finalmente reemplazado por Glênio Alvarez, quien se convirtió en el 27º presidente de FUNAI desde su fundación en 1967. Esto desalentó a las organizaciones indígenas pues Alvarez se mostró menos dispuesto a acelerar el proceso de demarcación.

Choque entre la policía militar y demostrantes indígenas. Fotos: J.Rocha

Grupo tariano durante un ritual en la "Semana de los Pueblos Indígenas", Manaus Foto: Christian Groes-Green

Marcha indígena de protesta. Fotos: J. Rocha

CGTT CONSELHO GERAL DA
TRIBO

La marcha indígena y la protesta contra la conmemoración de los 500 años de Brasil

La marcha indígena se inició a comienzos de marzo de 2000 con caravanas, de todo Brasil dirigiéndose hacia Porto Seguro, en Bahía, el sitio de la conmemoración oficial de los 500 años de Brasil. La marcha fue organizada por el "Comitê Outros 500" con miembros de CAPOIB (El Consejo de Articulación para los Pueblos y Organizaciones Indígenas de Brasil) y CIMI (El Consejo Indigenista Misionero) así como también líderes indígenas independientes. Más de 3.000 participantes, representando a 140 pueblos diferentes de 21 Estados del país hicieron manifestaciones y dieron discursos en 23 ciudades importantes brasileñas antes de juntarse en Coroa Vermelho, donde se celebró la "Conferencia para los Pueblos y Organizaciones Indígenas de Brasil".

La conferencia de los pueblos indígenas

A la Conferencia asistieron aproximadamente 3.000 indígenas, la mayor cantidad que haya asistido a una conferencia. Además de condenar la continua invasión de tierras indígenas y el exterminio de pueblos indígenas, el documento final de la conferencia también indicó nuevas direcciones para la resistencia indígena, haciendo énfasis en la importancia de construir una amplia alianza que comprenda a los movimientos indígenas, negros y populares contra las injusticias de la sociedad brasileña.

Las principales demandas del documento final de los pueblos indígenas al Estado brasileño fueron:

- El cumplimiento de los derechos de los pueblos indígenas como está garantizado en la constitución federal.
- La demarcación de todas las Tierras Indígenas (TIs) antes del final del año 2000.
- La retirada de los invasores de todas las tierras demarcadas, compensación y recuperación de las áreas y ríos degradados.
- Reconocimiento de los pueblos resurgentes[1] y de sus territorios.
- Protección de los territorios de los pueblos aislados[2] contra la invasión.
- Respeto por el derecho exclusivo de los pueblos indígenas al usufructo de todos los recursos naturales en las áreas indígenas, con especial atención a la biopiratería.
- Detención de las construcciones en marcha de proyectos hidroeléctricos, líneas de alta tensión, hidrovías, ferrocarriles y autopistas, así como compensación por los daños causados por los proyectos realizados hasta ahora.

Sateré-Mawé vendiendo sus artesanias durante la "Semana de los Pueblos Indígenas", Manaus.
Foto: Christian Groes-Green

- Poner fin a todas las formas de discriminación, expulsión, masacres, amenazas, actos de violencia e impunidad. Investigación inmediata de todos los crímenes cometidos contra los pueblos indígenas durante los pasados 20 años y castigo de los responsables.
- El reconocimiento y la enseñanza en las escuelas públicas de la verdadera historia de Brasil, tomando en consideración los miles de años en que la población indígena ha ocupado las diversas tierras llamadas Brasil.
- La elección del presidente de FUNAI por los pueblos indígenas siguiendo las recomendaciones de las organizaciones regionales.

Represión y violencia oficial

El 22 de abril, día final de la conferencia indígena, se impidió el acceso a la caravana indígena al área de celebración en Porto Seguro, donde se suponía que iba unirse a caravanas negras y populares y dar un discurso a la nación y al jefe de estado, Fernando Henrique Cardoso. Bajo órdenes directas de Cardoso, la policía militar abrió fuego e hirió a siete indígenas y además arrestó a 140 simpatizantes del movimiento negro y popular. En respuesta a la agresión, los manifestantes se arrancaron sus vestimentas de "hombre blanco" y arrojaron piedras a los oficiales de la PM.

El año 2000 estuvo caracterizado en general por la violencia contra los pueblos indígenas. En Mato Grosso do Sul, terratenientes mataron a dos *guaraní-kaiowá* y trabajadores madereros de la misma región asesinaron a un niño *nambikwara*. En Acre fueron asesinados al menos tres indígenas no identificados, según se dice, por un concejal de la ciudad. El líder indígena *yanomami* Davi Kopenawa informó que soldados del ejército habían violado a mujeres jóvenes causando una epidemia de gonorrea. En Pernambuco, la policía federal invadió el área indígena Truká con helicópteros y autobuses, arrestando y golpeando a varios individuos alegando que estaban involucrados en el tráfico de drogas.

La reactivación del proyecto militar "Calha Norte", en la Amazonía, también causó temor e inseguridad entre los pueblos indígenas de la región. La abundante presencia militar, cuyo objetivo es ganar el control geopolítico de la región, expone a muchos pueblos aislados a un contacto perjudicial. El gobierno federal justifica la opción de la Amazonía como región estratégica afirmando la necesidad de una defensa efectiva de los recursos naturales contra la invasión militar extranjera y la exploración. En áreas indígenas del Estado de Amazonas han habido informes de que personal militar abusó sexualmente de las mujeres, distribuyendo alcohol y entrando a las aldeas indígenas sin permiso.

El nuevo Estatuto del Indio

La propuesta para un nuevo Estatuto del Indio elaborada por el presidente Marés de la FUNAI, fue aprobada por las influyentes organizaciones amazónicas en el mes de abril, pero las severas críticas de líderes indígenas de las partes central y oriental de Brasil, de acuerdo con el CIMI, hicieron que FUNAI suspendiera la propuesta. El Ejecutivo Federal está procesando ahora una propuesta alternativa, pero la cuestión clave es si las organizaciones indígenas regionales pueden llegar a un acuerdo o no. El problema es que las organizaciones amazónicas, bajo la coordinación de COIAB (Coordenação das Organizações Indígenas da Amazônia Brasileira) creen que hacer compromisos con el gobierno es la única forma de influir su política indigenista. Mientras que las organizaciones indígenas de las regiones centrales y orientales ponen énfasis en el claro deterioro del Estatuto del Indio en comparación con el proyecto de ley de 1991 y el Estatuto de 1973, que está vigente. Los representantes *kayapó* y *xavante*, por ejemplo, se niegan a aceptar el punto de la actual redacción que impide la prospección ilimitada por parte de los pueblos indígenas y el punto que trata sobre la limitación del tutelaje de la FUNAI, del cual ambos grupos son dependientes, así como también del punto que priva a los llamados indígenas "aculturados" de su derecho a la impunidad.

Salud indígena

La Comisión Pro-Yanomami (CCPY) informa que los yanomami experimentaron severos problemas de salud en el año 2000. Es particularmente preocupante la inmigración de familias yanomami enfermas de Venezuela. Uhiri, una organización de la salud no-gubernamental, encontró a 453 de estos inmigrantes con serias enfermedades como malaria, infecciones respiratorias agudas y enfermedades dermatológicas. El proceso de inmigración, causado por la falta de servicios entre los yanomami de Venezuela, es desastroso. Primero, porque los inmigrantes necesitan realizar marchas exhaustivas y cruzar áreas yanomami donde no son bienvenidos, lo cual los pone en una situación sumamente vulnerable. Segundo, porque estos desesperados inmigrantes pueden ser transmisores de enfermedades peligrosas que podrían tener consecuencias catastróficas para las áreas yanomami brasileñas.

Demarcación de tierras indígenas

Sólo cinco tierras indígenas que comprenden apenas 149.276 hectáreas fueron demarcadas en el año 2000, convirtiéndolo en el segundo peor año en términos de demarcación de los últimos diez años. En marzo de 2001, la situación jurídico-administrativa general relativa a las *terras indígenas* (TIs) en Brasil es como se muestra a continuación.

Situación Jurídica	No (Número de TIs)	HA (hectáreas)
A ser identificadas	135	
Identificadas	16	2.275.007
Delimitadas	55	10.394.545
Demarcadas	19	1.917.403
Ratificadas	34	10.376.906
Registradas	321	76.297.577
Total	580	101.261.438

De un total de 580 TIs en Brasil, hasta ahora han sido demarcadas más del 60 por ciento, cubriendo un área de 76.297.577 hectáreas, lo cual corresponde al 12,3 por ciento de la extensión del territorio nacional. Más de dos tercios de la cantidad total de demarcaciones concluidas se han realizado durante la última década.

FUNAI predice la demarcación de 34 TIs para el año 2001, 17 de las cuales serán demarcadas con recursos del programa PPTAL de los países G7. En el Estado de Amazonas serán demarcadas 12 tierras habitadas por los pueblos *kokama, mundurucu, tucuna, apuriña, mura, tenharim*, y *torá*. En el Estado de Roraima se espera la demarcación de las tierras *macuxi* y *wapixana*, así como la demarcación del territorio *mundurucu* en el Estado de Pará. Esto no significa que el proceso de demarcación se realizará sin severos obstáculos en los años venideros. Como ejemplo, el atolladero de un año de duración de la demarcación del área Raposa/Serra do Sol, habitada por aproximadamente 12.000 indígenas, no fue resuelto en el año 2000. Los terratenientes locales y prospectores (*garimpeiros*) que trabajan en las áreas indígenas así como el Gobierno del Estado de Roraima y políticos de derecha del Senado están juntando fuerzas para suspender el proceso de demarcación. Los terratenientes y prospectores alegan su derecho a permanecer en ciertas tierras del área y agitan a favor del decreto firmado por el Ministro de Justicia en 1996 que sugiere una reducción de 300.000 hectáreas del área originalmente identificada por FUNAI, que es de 1.678.800 hectáreas.

Un problema más general relativo al proceso de demarcación en Brasil es que hay pocos recursos disponibles para financiar la demarcación de TIs fuera de la Amazonía. Esto sucede porque por el momento, la única fuente financiera sólida de que dispone FUNAI son los recursos disponibles del programa PPTAL, los cuales están todos dedicados a la región amazónica. Los intereses políticos en los recursos minerales son la razón fundamental para la demora general del proceso de demarcación. En cooperación con los diputados del ala derecha que constituyeron la "Fracción Amazónica", el Senado Federal ha establecido una ICP de las actividades de las ONGs en Brasil, justificada por un supuesto temor de internacionalización de la Amazonía. El objetivo de esta absurda iniciativa es obviamente impedir el apoyo internacional a los intereses indígenas y ambientales en el país, facilitando así el acceso a los minerales y otros recursos de las reservas indígenas y naturales. Es de notar que la "Fracción Amazónica" aprobó el informe, que concluye el ICP de FUNAI sugiriendo que:

- Los límites de la TI Raposa/Serra do Sol deberían ser revisados, segmentando las áreas indígenas con relación a las tierras de los terratenientes locales y los ocupantes.
- Deberían realizarse investigaciones sobre las actividades del Centro para el Trabajo Indígena (CTI).
- Las futuras ratificaciones de demarcaciones deberían someterse al escrutinio del Congreso Nacional.
- Debería iniciarse investigaciones sobre la sociedad entre los indígenas de la TI Raposa/Serra do Sol y las ONGs.

Estas iniciativas anti-indígenas están vinculadas a la próxima implementación de "Avança Brasil", un enorme programa de desarrollo constituido por docenas de importantes proyectos de infraestructura que tiene la intención de acelerar el desarrollo económico relacionado con las actividades de agricultura industrial, explotación maderera y minera. Según un artículo de William F. Laurance et al. publicado en *Science*, la inversión del Gobierno brasilero de más de $40 mil millones durante los años 2000-07, será usada en autopistas, ferrocarriles, gasoductos, proyectos hidroeléctricos, líneas energéticas y programas de canalización de ríos. Si este programa se lleva a cabo, tendrá consecuencias catastróficas para los pueblos indígenas del Brasil y su medio ambiente.

Actitud brasileña hacia los pueblos indígenas

Una comprehensiva investigación nacional realizada en febrero de 2000 por el Instituto Socioambiental (ISA) revela que una gran mayoría de la población brasileña reconoce los derechos indígenas y apoya la demarcación de territorios indígenas. Por ejemplo, el 82 por ciento de la población cree que el gobierno federal debería actuar contra la extinción de pueblos indígenas y promover su defensa. A pesar de la falta de disposición del Estado brasileño para defender los intereses indígenas y su continua represión de los mismos, la actitud de la población señala la posibilidad de un futuro clima de respeto y coexistencia entre las diferentes sociedades.

Notas y fuentes

[1] Resurgente es la expresión usada para designar a los grupos indígenas que han sido considerados extintos, desaparecidos o no-existentes pero que de alguna manera han resurgido y han sido recuperados.

[2] Pueblos indígenas que viven en aislamiento voluntario o se cree que nunca han sido contactados.

Boletim Yanomami, No. 12, 25/04/01.

Brasil Indígena, No. 21, abril 2001.

Coordenação das organizações indígenas da Amazônia Brasileira, COIAB (nd.): *Relatório da marcha indígena 2000*. COIAB, Manaos.

Conselho Indigenista Missionário, CIMI (2001): *Marcha e conferência indígena*. CIMI, Brasilia.

Conselho Indigenista Missionário, CIMI (2001): *Agora são outros 500*. CIMI, Brasilia.

Conselho Indigenista Missionário, CIMI (2001): *Situação jurídico-administrativa atual das terras indígenas no Brasil*. CIMI - Secretariado Nacional, Brasilia.

Conselho Indigenista Missionário, CIMI, homepage: www.cimi.org.br.

Fundação National do Indio, FUNAI (2001): *Terras indígenas tradicionais - procedimento demarcatório*. DAF - FUNAI, Brasilia.

Instituto Socioambiental, ISA (2000): *Povos indígenas no Brasil: 1996-2000*. Instituto Socioambiental, San Pablo.

Instituto Socioambiental, ISA, homepage: www.socioambiental.org.

Porantim - Em defesa da causa indígena, No. 229, octubre 2000.

Porantim - Em defesa da causa indígena, No. 230, noviembre 2000.

Porantim - Em defesa da causa indígena, No. 231, diciembre 2000.

Science, Vol. 291, enero 2001.

ARGENTINA

Nuevo gobierno en Argentina, nuevas autoridades en el Instituto Nacional de Asuntos Indígenas, nuevas directivas, otra ideología. ¿Cuál ha sido el resultado?

Retroceso en el indigenismo estatal

A pesar de que existe en el país un resurgimiento del movimiento indígena, los dirigentes políticos de Argentina continúan ignorando este hecho. Así, durante el año 2000 las nuevas autoridades del Instituto Nacional de Asuntos Indígenas (INAI) presentaron un programa de acción que retoma el viejo ideario integracionista-desarrollista de décadas pasadas. Como consecuencia, se produjo un franco retroceso en el indigenismo estatal: se frenaron programas y actividades que estaban en marcha, se dilató inadmisiblemente la aprobación de otros, poniéndose en evidencia que este país aún no ha adoptado una política coherente para con los pueblos indígenas que habitan en él y que todo cuanto se encara se hace sin planificación previa y sin respeto por los derechos indígenas.

Por lo tanto, cuando cambian los funcionarios no sólo cambian las políticas sino también las ideologías y principios en que se sustentan. Parece que los dirigentes políticos en Argentina "no saben qué hacer con los indígenas". Por consiguiente, cíclicamente, los "asuntos indígenas" quedan subordinados a los vaivenes del partidismo político acentuando la dependencia clientelar y el paternalismo asistencialista. Así, mientras los demás ciudadanos tienen varios organismos donde presentar sus reclamos, los indígenas pueden hacerlo sólo en el INAI.

Convenio 169: Sin consulta y sin participación indígena

Actualizando las esperanzas indígenas, aunque pueda resultar paradójico con lo dicho más arriba, la Cancillería Argentina ratificó en el mes de julio del presente año el Convenio 169 de la OIT, un reclamo largamente reiterado por las organizaciones indígenas.

Si bien la Constitución Nacional y el Convenio 169 prescriben la necesaria consulta y participación de los pueblos indígenas en todo cuanto afecte sus vidas, durante el período ello no ha sido respetado. Para ilustrarlo sólo bastan algunos ejemplos:

1) Luego de 15 años de la sanción de la ley que creó el INAI y a raíz de una sentencia judicial por una demanda que dio nacimiento a la Asociación Indígena de la República Argentina (AIRA) en agosto de 2000, un decreto presidencial dispuso la inmediata regularización del INAI como ente descentralizado con participación indígena y presupuesto propio. Trans-

Encuentro del Consejo General de Caciques Lhaka Honhat, San Luis, provincia de Salta, Argentina
Foto: Morita Carrasco

Topadora destruyendo el cementerio de los wichis que viven en la aldea de Hoktek T'oi, provincia de Salta, Argentina. Foto: John Palmer curridos varios meses desde entonces, el Instituto sigue bajo la dependencia del Secretario de Desarrollo Social, sin participación indígena y con el agravante de una fuerte reducción en las partidas presupuestarias que tiene destinadas. De éstas sólo el 20% habían sido otorgadas a fines del ejercicio.

2) La ausencia de consulta y participación indígena se patentiza en la puesta en marcha de un programa de salud sin que los destinatarios tuvieran siquiera la posibilidad de opinar al respecto. El 24 de julio el Ministro de Salud de la Nación presentó junto al presidente el *"Programa de Apoyo Nacional de Acciones Humanitarias para las Poblaciones Indígenas"* (ANAHI), que "viene a poner en práctica el artículo de la ley indígena nacional 23302 que garantiza el derecho a la salud de las poblaciones indígenas". Sintéticamente, el programa consiste en el establecimiento de un sistema de atención básica basado en la labor de agentes sanitarios indígenas comunitarios. Sistema que, aún con deficiencias, se ha venido implementado desde hace varios años, por lo cual, en los hechos sólo se trató de un cambio de nombres y una sustitución de responsables. Por lo demás, el decreto de creación prevé el funcionamiento de un Consejo Consultivo en el cual no ha participado ni un solo representante indígena. Los integrantes de este consejo se reunieron cuatro veces durante el año, pero no han podido aún establecer un programa para llevar adelante aunque, no obstante, varios empleados cobran un salario por su afectación al ANAHI.

Pasando revista a la gestión del INAI del año 2000

Programa de regularización de tierras indígenas

Existen tres convenios firmados entre INAI y las provincias de Chubut, Río Negro y Jujuy, los cuales prevén aportes presupuestarios de las partes. Este programa forma parte del espectacular anuncio -hecho en 1996 por el presidente Menem- de entregar a sus legítimos dueños 2.000.0000 de hectáreas de tierras fiscales. A cuatro años de esa fecha el resultado es muy pobre. En el año 2000 algunas provincias fueron avanzando por su cuenta mientras que no hubo de parte del INAI una sistemática consecución de la política de regularización de tierras.

Prioridad de la gestión 2000: programa de becas estudiantiles

En coincidencia con la ideología integracionista-desarrollista que caracterizó a la conducción del INAI durante el período, la actividad más importante y la que acaparó la mayor parte de los recursos, en desmedro de otros programas como el de tierras, tan injustamente postergado, fue la implementación de un sistema de becas para estudiantes de los niveles medio y universitario. Este sistema consiste en el otorgamiento de un estipendio mensual (US$60 para el nivel medio y US$200 para el universitario) a jóvenes indígenas para que logren una mejor inserción en el sistema de educación formal estatal bajo la supervisión de un tutor. Luego de un complejo y prolongado régimen de selección se otorgaron 1.354 becas a estudiantes secundarios, muchas de las cuales permanecían impagas a diciembre de 2000.

Cooperación internacional para el desarrollo en comunidades indígenas

El INAI es contraparte local en tres programas que cuentan con financiamiento internacional de distinta fuente y modalidad.

El "Programa de Desarrollo Integral Ramón Lista" (DIRLI): Por convenio con la Unión Europea (US$8.000.000 durante cuatro años con contraparte nacional), este programa se está implementando en la provincia de Formosa. Su objetivo general es: "mejorar las condiciones de vida de las comunidades *wichí*, a partir de la activación de un proceso de desarrollo endógeno y autosostenido que apunte a la conservación de su identidad cultural". Luego de un estancamiento producto del retraso en la disponibilidad de fondos, el programa se puso en marcha dando prioridad al mejoramiento de las viviendas y la provisión de agua con fondos aportados por el estado provincial. La población wichí que se beneficiará con este programa es aproximadamente de 6.000 personas.

El "Componente de Atención a Población Indígena" (CAPI) del Programa de Atención a Grupos vulnerables del Banco Interamericano de Desarrollo (BID) (US$4.000.000 aproximadamente para cuatro años y con contraparte nacional) se desarrolla en tres provincias; Jujuy, Salta y Chaco. Abarca comunidades y organizaciones indígenas de diferentes pueblos. Su objetivo principal es "fortalecer la capacidad de gestión operativa de las organizaciones indígenas de base y de segundo nivel." Hasta el momento se han llevado a cabo diagnósticos sociales; se han realizado reuniones de capacitación para personería jurídica y diseño de proyectos, y se ha iniciado en algunas comunidades la marcha de proyectos específicos.

El proyecto "Desarrollo de Comunidades Indígenas y Protección de la Biodiversidad" tiene financiamiento del Banco Mundial, (US$6.000.000 más un aporte nacional) y su objetivo es fortalecer las comunidades indígenas de áreas piloto seleccionadas con énfasis en el "desarrollo sustentable con identidad" y subsidiariamente discutir soportes legales alternativos para áreas protegidas. El proyecto se ha quedado estancado desde octubre de 2000 a la espera de que el Presidente de la Nación dicte el decreto de aprobación final. A comienzos de 2001, es incierta la suerte que correrá el programa, ya que de no dictarse el mencionado decreto, el Banco posiblemente decida no continuar con el mismo.

Reconocimiento y defensa de derechos

La Iglesia Católica

El 12 de mayo de 2000, en un documento oficial, los obispos católicos, invocando la Constitución Nacional que reconoce el derecho a la posesión y propiedad comunitaria de las tierras por parte de los aborígenes, abogaron por una "aceleración de la devolución de tierras a los aborígenes, ya sean fiscales o de particulares".

La Justicia Ordinaria

La falta de aplicación de los derechos constitucionales ha llevado a los indígenas a presentar sus reclamos ante la justicia. Y, sorprendentemente para una país poco respetuoso de la diferencia cultural, durante el año 2000 algunos jueces produjeron fallos alentadores para el reconocimiento de sus derechos. Entre ellos los siguientes:

En la provincia de Neuquén, una comunidad del pueblo *mapuche* obtuvo su derecho a recibir educación bilingüe, incorporando a la escuela Nº 319 del Paraje Aucapán Abajo un maestro de lengua y cultura mapuche. A través de esta jurisprudencia se reconoce expresamente que las comunidades aborígenes argentinas tienen un derecho exigible judicialmente cuya satisfacción es obligatoria para el Estado.

En la provincia de Santa Cruz, una familia del pueblo *tehuelche* resultó vencedora en una disputa judicial de más de un siglo por la recuperación de su territorio. La jueza de la ciudad de Río Gallegos dictaminó que tras cinco años de ausencia forzada los tehuelches podían volver a su lugar ancestral. Este caso marcó por primera vez la aplicación en Santa Cruz de la reforma constitucional de 1994 que garantiza los derechos de propiedad de los territorios indígenas.

Violaciones, amenazas y atentados contra la integridad física, territorial y cultural de los pueblos indígenas

Ocupación de tierras indígenas

Continúan las ocupaciones de tierras en diversas provincias, sin respeto por los derechos territoriales indígenas. En especial, las comunidades del pueblo mapuche en las provincias de Río Negro y Chubut deben reiterar ante la justicia denuncias de violaciones de derechos y demandas de respeto. A modo de ejemplo citamos las siguientes:

En el marco de un juicio reivindicatorio, los integrantes de las familias que forman parte de la comunidad mapuche 'Vuelta del Río', la mayor reserva aborigen del Chubut, creada en 1899 por un decreto presidencial, vienen siendo acosados judicialmente tras la denuncia de usurpación formulada en 1994 por los descendientes de un terrateniente de la zona que ostenta la propiedad de las tierras ocupadas tradicionalmente por los mapuche. La comunidad, conformada por 25 familias, no cuenta con electricidad ni escuela y las familias habitan viviendas precarias en 15 lotes de 625 hectáreas cada una.

En la provincia de río Negro, la comunidad Kom Kiñe Mu -Arroyo Las Minas- enfrenta juicios de desalojo. Para defender su derecho presentó un recurso administrativo denunciando el accionar ilegítimo de la Dirección Provincial de Tierras Fiscales, pendiente de resolución en el Tribunal Superior de Justicia.

En la provincia de Salta, la comunidad Hoktek t' oi del pueblo wichí se encuentra arrinconada en 27 hectáreas, sufriendo la depredación de su entorno por parte de una empresa forestal. Actualmente se encuentra en trámite en el Congreso Nacional un proyecto de expropiación de estas tierras (aproximadamente 3.000 hectáreas de su territorio tradicional de 75.000) y un interdicto contra la empresa Los Cordobeses S.A. que pretendía desalojarlos de un remanente de 17 hectáreas del bosque nativo que colinda con la comunidad.

En la Provincia de Chubut, el Ejército Argentino argumenta ser el propietario de las tierras de la comunidad Prane y pretende desalojar a las familias mapuche de su lugar.

En la provincia de Salta, la Comunidad Tinkunaku del pueblo *kolla* no puede hacer uso de 80.000 hectáreas del cerro donde pastan sus animales debido a que enfrenta un trámite judicial de revocación de la donación iniciado por la empresa donante. Mientras tanto, la empresa busca dividir la organización indígena comprando con dinero a sus miembros y pretendiendo confundirlos, para que se cansen y renuncien a sus derechos.

Atentado contra un dirigente indígena

Jorge Santucho de la comunidad de Amaicha del Valle en la provincia de Tucumán fue quemado vivo por la familia Cruz. En una disputa por el control del área de las ruinas de Quilmes, Jorge Santucho fue rociado con nafta cuando se encontraba manejando el tractor comunitario en la tarea de desalambrar tierras que sin previa consulta habían sido cercadas por esta familia, que hace unos años obtuvo un permiso precario para realizar un emprendimiento hotelero en la zona donde se encuentran importantes restos arqueológicos de la Ciudad Sagrada Diaguita de Quilmes. Luego de una prolongada internación Jorge Santucho ha podido volver a su comunidad.

Contaminación petrolera

En la provincia de Neuquén, dos comunidades del pueblo mapuche continúan librando una dura batalla contra la petrolera Repsol / YPF. En junio, miembros de las dos comunidades decidieron impedir por sus propios medios la ejecución de trabajos de mantenimiento en instalaciones ubicadas en el yacimiento de Loma de la Lata como protesta por la ampliación de contratos de explotación. En esa oportunidad, hicieron llegar a las autoridades provinciales un llamamiento para que se frene la agresión personal, material y cultural que sufren como consecuencia de las actividades de esta compañía.

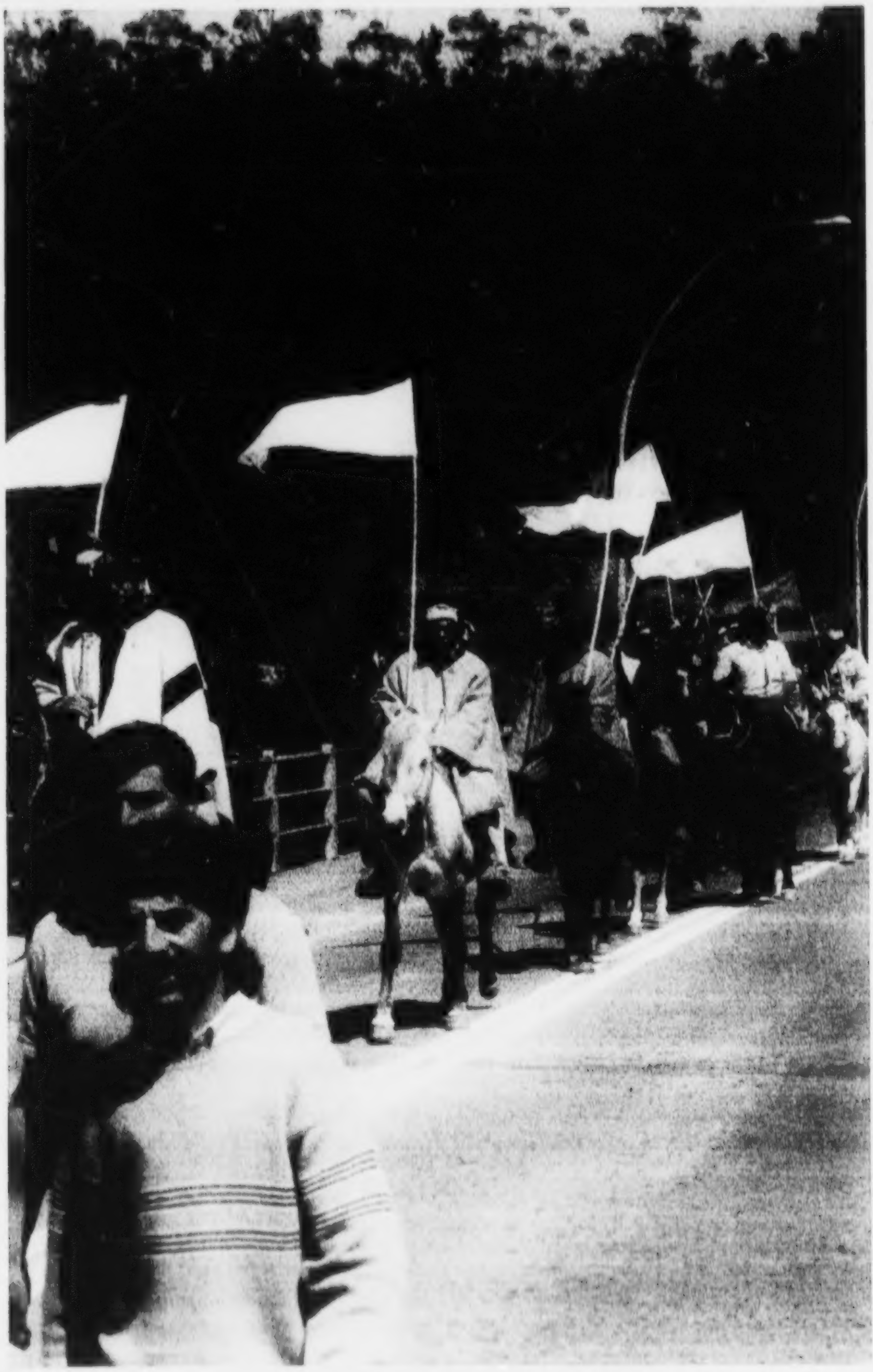
Conflicto de tierras en ámbito internacional

Continúa su trámite la denuncia efectuada ante la Comisión Interamericana de Derechos Humanos (CIDH) por la Asociación de Comunidades Aborígenes Lhaka Honhat contra el Estado Argentino por la falta de estudios de impacto ambiental y en demanda de la propiedad de su territorio en el chaco salteño. En el mes de noviembre se realizó en Buenos Aires una audiencia entre las partes con asistencia del presidente de la Comisión. En ella se acordó iniciar un proceso de diálogo con el fin de elaborar una propuesta de solución amistosa a ser presentada a la CIDH en la próxima audiencia a celebrarse el 1 de marzo de 2001.

CHILE

El año 2000 no ha constituido una excepción con respecto a años anteriores y ya desde el comienzo, el nuevo presidente socialista, Ricardo Lagos, y su gobierno se vieron enfrentados a la difícil tarea de intentar resolver una serie de conflictos entre los pueblos indígenas de Chile y la sociedad chilena – conflictos que en gran medida son el legado de gobiernos anteriores.

El más destacado fue el conflicto de un año de duración entre las compañías madereras y los terratenientes privados por un lado, y el mayor grupo indígena, los *mapuche* del sur de Chile por el otro (ver **Chile** en *El Mundo Indígena 1999-2000*). Las organizaciones "Consejo de Todas las Tierras" y "la Coordinadora Arauco-Malleco" han sido todo el tiempo los espíritus impulsores de la movilización. Las demandas mapuche por la recuperación de su tierra y por el reconocimiento como pueblo plantean una seria amenaza para la industria forestal y para la economía chilena en general, ya que la industria es un importante factor contributivo para el crecimiento de la economía chilena. Por esta razón, los gobiernos chilenos han negado, en muchos casos, el reconocimiento de los derechos territoriales de los pueblos indígenas. Un caso destacado fue la aprobación de la Represa Ralco por el anterior gobierno de Eduardo Frei a pesar de que está siendo construida en tierras definidas como indígenas e im-



Demostración mapuche el 12 de octubre, día del descubrimiento de América por Colón.
Foto: Dorthe Kristensen

plicará la reubicación de unos 700 indígenas(ver *El Mundo Indígena 1999-2000*).

Como consecuencia, las demandas del movimiento mapuche han sido enfrentadas con grandes reservas por el gobierno de Eduardo Frei, aunque la ley indígena de 1993 otorga, en realidad, una base legal para la demanda de vastas áreas de tierra indígena. En un intento de mantener la estabilidad política, el gobierno de Frei ha utilizado la ley de seguridad interna del estado contra los así llamados "terroristas" mapuche en una acción política represiva que, en determinada medida, recordaba a los días de Pinochet. El gobierno de Ricardo Lagos asumió el poder en una fase muy crítica de los conflictos, cuando las negociaciones habían llegado a un punto muerto y ya había sido establecida la línea de acción contra los llamados "terroristas".

La situación de derechos humanos

El año 2000 ha estado marcado por muchos conflictos que reflejan una desconfianza general o incluso una hostilidad contra el gobierno chileno, y el movimiento mapuche ha propagado repetidamente acusaciones de racismo y violaciones de los derechos humanos. Un ejemplo fue el caso de 10 líderes y activistas mapuche, quienes durante febrero y marzo fueron acusados de una serie de crímenes muy serios que iban desde incendio premeditado y robo de madera hasta secuestro, violación de la ley de seguridad interna del estado y el intento de homicidio de tres guardias de seguridad que trabajaban para la compañía maderera Mininco. Entre las personas arrestadas estaba el dirigente de la organización "Coordinadora Arauco-Malleco", Víctor Ancalaf Llaupe, quien fue arrestado por secuestro y violación de la ley de seguridad interna del estado después de la ocupación de la Corte de Justicia en la ciudad de Collipulli el 28 de marzo de 2000. El tribunal fue ocupado para protestar contra el encarcelamiento de Pedro Maldonado Urra y Luis Ancalaf, quienes fueron acusados de intento de homicidio de los tres guardias de seguridad.

Los mapuche arrestados, así como sus organizaciones, negaron toda responsabilidad relativa al intento de homicidio. En cambio, acusaron a la compañía Mininco de ser responsable del acto. Esa acusación asumió más credibilidad cuando una confesión escrita de varios guardias de seguridad de la compañía maderera fue leída en la radio nacional Bio Bio, en febrero de 2000, en la cual admitieron realizar actos de asalto y vandalismo con la intención de culpar al movimiento mapuche de los incidentes. Sin embargo, hasta ahora ningún guardia de seguridad ha sido arrestado o acusado. Mientras que los arrestos de los mapuche fueron implementados sin vacilación. Después estos arrestos fueron denunciados como irregulares, pues una de las confesiones fue hecha después de 15 días de confinamiento aislado y tortura, mientras que la ley sólo permite 10 días de confinamiento aislado. No obstante, la confesión se convirtió en la prueba principal de la acusación contra los 10 mapuche. Además, las familias de los arrestados, especialmente en el caso de Víctor Ancalaf, sufrieron hostigamientos y amenazas serias, supuestamente por parte de empleados de la compañía maderera Mininco. Los mapuche fueron gradualmente liberados de la prisión en forma condicional. El último en ser liberado en agosto de 2000 fue Víctor Ancalaf, después de cinco meses de prisión. No obstante, se siguen investigando las serias acusaciones.

Muchos mapuche consideraron este caso como un ejemplo de las violaciones de derechos humanos que ha cometido repetidamente el gobierno chileno. La imposición de la ley de seguridad interna del estado en este caso fue considerada como un reflejo del deseo del gobierno de sofocar la demanda de autonomía. Por lo tanto, los arrestados fueron considerados como prisioneros políticos. El caso fue además considerado como una prueba de que el gobierno chileno sirve primariamente a los intereses de fuertes grupos económicos y que las leyes "democráticas" no protegen a los grupos más marginados. Las organizaciones radicales mapuche alegaron que las políticas represivas del gobierno no les dejaban otra opción que responder de forma similar. Parecía inevitable una nueva espiral de violencia.

Otro caso, que fue seguido muy de cerca por la prensa chilena durante el 2000, fue la protesta de los estudiantes indígenas contra una presunta clausura de varias residencias estudiantiles para estudiantes indígenas, seguida de demandas de mejora de becas y créditos. Las residencias estudiantiles, que nunca habían sido reconocidas oficialmente por el gobierno chileno, fueron entonces denunciadas como una cuna de terroristas mapuche. En base a esto, las residencias fueron puestas bajo minuciosa observación, se cortó la electricidad y se negó suministrar comidas y becas. En protesta, los estudiantes ocuparon los edificios de la Corporación Nacional para el Desarrollo Indígena (CONADI) en Temuco y Santiago.

Diálogo, soluciones y limitaciones

Todos estos conflictos, y muchos otros, son algunos de los asuntos que Ricardo Lagos ha tenido que encarar durante su primer año en el poder. Él lo ha hecho intentando establecer un diálogo con las organizaciones mapuche para tratar de encontrar algunas soluciones sustentables a largo plazo.

Deseando demostrar su oposición al gobierno de Frei, anunció la creación de una "Comisión de la verdad histórica", el 31 de marzo de 2000. Además, inició un diálogo con el movimiento indígena mediante el establecimiento de una mesa de negociaciones. Se invitó a representantes mapuche, fundamentalmente de la Corporación Nacional para el Desarrollo Indígena (CONADI), a participar junto con académicos, representantes de la iglesia, empresarios y otras personas relacionadas con el pueblo mapuche. No obstante, los dirigentes de las organizaciones más radicales como la Coordinadora Arauco-Malleco y el Consejo de Todas las Tierras no fueron invitados, lo cual produjo fuertes críticas desde el inicio de las negociaciones.

Los resultados de la mesa de diálogo fueron publicados el 1 de junio de 2000. No es de sorprender que el conflicto fue considerado fundamental y primordialmente como un problema económico en vez de un problema político. Puesto que el conflicto fue definido como un resultado de la pobreza, las medidas acordadas se basaron en esta premisa. En una ceremonia en el recinto parlamentario "La Moneda" Ricardo Lagos hizo públicas 16 medidas, entre las que estaban:

- La fundación de grupos de trabajo regionales.
- Cooperación con representantes indígenas en el establecimiento de proyectos.
- Subsidios de 100.000 pesos a 10.000 pequeños productores rurales (180 US$).
- Distribución de 50.000 hectáreas de tierra antes de diciembre de 2001 y 150.000 hectáreas en total durante el período de gobierno de Lagos.
- La celebración nacional del día de los pueblos indígenas el 24 de junio.
- El desarrollo de un proyecto relativo al reconocimiento constitucional de los pueblos indígenas.

Estas medidas parecieron prometedoras pero lejos de ser satisfactorias para las organizaciones mapuche. Las medidas concernientes al "espíritu", tal como se expresó, por ejemplo, la celebración nacional del día de los pueblos indígenas, fueron recibidas generalmente con satisfacción. Lo mismo sucedió con el último punto de la agenda – el reconocimiento constitucional, que es el punto más crucial del Movimiento Mapuche.

Por otro lado, el hecho que la ratificación del Convenio 169 de la OIT relativo a los pueblos indígenas fuera pospuesto tuvo como resultado una fuerte crítica por parte de las organizaciones mapuche. Además, no se definió a cuales de los pueblos indígenas de Chile, los *mapuche* en el sur o los *aymará, quechuas, atacameños* en el norte, se asignarían las 150.000 hectáreas de tierra (*La Tercera,* agosto 8, 2000). También resultó ser difícil para CONADI encontrar parcelas de tierra que pudieran ser compradas con vista a ser transferidas a los mapuche. Además, los fondos para la compra de tierras probaron ser inadecuados, pues pronto los precios se fueron a las nubes. El asesor indígena de CONADI, Hilario Huirilef, estimó entonces que los 11.000 US$ que habían sido otorgados estaban lejos de ser suficientes para adquirir las 50.000 hectáreas determinadas en el año 2000 (*El Mercurio,* agosto 7, 2000). El hecho de que terratenientes privados estaban especulando y beneficiándose con el conflicto fue difícil de negar. Finalmente, el caso de la represa Ralco no fue tratado, pues Ricardo Lagos había evitado tratar el problema, dejando que la justicia decidiera si la construcción de la represa era ilegal o no.

Resumiendo, las reacciones con respecto a las medidas del gobierno fueron bastante negativas, ya que parecieron ser soluciones improvisadas en vez de soluciones en profundidad. El intento de encontrar un equilibrio entre las políticas neoliberales y las normas internacionales relativas a los pueblos indígenas demostró ser muy difícil. En vez de resolver el conflicto, el diálogo pareció escalarlo, debido fundamentalmente a que las demandas principales de los representantes de las organizaciones más radicales no fueron tratadas.

La lucha por una explicación de la historia "real"

Durante el año 2000 se hizo más y más evidente en qué medida una solución del "conflicto" mapuche implicaría repensar la relación histórica entre los pueblos indígenas de Chile y el estado nacional chileno. En este contexto, es interesante notar que el proceso llamado "la recuperación del territorio", que inicialmente parecía ser fundamental y primordialmente una protesta contra la marginación y creciente empobrecimiento de los indígenas mapuche, ha sido acompañado en forma creciente por esfuerzos para revitalizar estructuras tradicionales y una demanda de reconocimiento como pueblo, con los correspondientes derechos al territorio y a la autonomía. Sin embargo, la discusión sobre qué implica la palabra autonomía recién ha comenzado.

La mayoría de los políticos continuaron negando las raíces políticas y culturales del problema, reduciéndolo a una cuestión de dificultades económicas. La polémica entre el historiador Sergio Villalobos, ganador de un premio nacional de historia, y una serie de académicos mapuche y chilenos, está en la misma línea de discusión. El 14 de mayo del año 2000, el Sr. Sergio Villalobos publicó un artículo en el periódico *El Mercurio* en el cual caracterizaba a la "pacificación" de los mapuche como inevitable, ya que el encuentro de una cultura altamente desarrollada con una menos desarrollada siempre tiene como resultado que la primera domina a la última. Villalobos propuso además el punto de vista de que en el caso de los mapuche, este proceso fue ciertamente positivo ya que, entre otras cosas, trajo la civilización y *"la práctica de la justicia en vez de la venganza, la práctica de la monogaimia así como el castigo de la homosexualidad, la cual era antes una práctica corriente"*. No fue una coincidencia que este artículo fuera publicado poco tiempo después de la publicación de los primeros resultados de la mesa de diálogo. Como tal, podría ser considerado como un ejemplo del discurso nacionalista chileno, el cual está en profundo conflicto con las demandas de las organizaciones mapuche. No es tampoco de sorprender que las respuestas de los mapuche y los académicos simpatizantes de los mapuche fueran muy críticas. Por lo tanto, mediar entre estas dos posiciones será un arduo desafío para la Comisión.

Como forma de conclusión

El objetivo de "la Comisión sobre la verdad histórica" ha sido establecer nuevas formas de participación indígena así como también explicar la verdadera relación histórica entre el gobierno chileno y los pueblos indígenas. Las medidas del 1 junio del año 2000 dieron las primeras líneas directivas para el trabajo de esta comisión. Sin embargo, en otoño del mismo año la insatisfacción con los resultados se hizo visible en forma creciente. Las movilizaciones comenzaron otra vez, la tierra fue simbólicamente ocupada y se informó que individuos portando capuchas, presumiblemente mapuches, habían cometido crímenes como intento de homicidio, incendio premeditado y robo de madera. Muchos indígenas mapuche sufrieron arrestos, los cuales, informaron las víctimas, fueron ejecutados haciendo un uso exagerado de violencia; hubo heridos y las casas fueron saqueadas. No obstante, la prensa chilena estaba más preocupada por la supuesta acción "violenta" de los mapuche que por los ejemplos de tortura y mutifación que experimentaron las comunidades involucradas en el "conflicto".

Como resultado, los políticos de derecha, cuya visión de Chile como una sociedad homogénea era amenazada por las demandas mapuche, fueron los principales en propagar la sospecha de que las organizaciones radicales, en vez de dialogar con el mapuche común, habían sido infiltradas por "terroristas foráneos". Se iniciaron investigaciones con el objetivo de "revelar" el grado en que los extranjeros organizaban las movilizaciones. Según los políticos de derecha, cuánto más radicalmente y violentamente el movimiento mapuche trataba de propagar sus demandas, tanto más razonable parecía negarse a la demanda de "dividir" el país en dos, lo cual, según su parecer, sería la consecuencia de una ratificación del Convenio 169 de la OIT. No es de sorprender que el parlamento, el cual todavía cuenta con un gran porcentaje de políticos del ala derecha, rechazó definitivamente la ratificación del Convenio 169 en noviembre del año 2000.

El 18 de enero de 2001, la comisión fue rebautizada con el nombre de "Comisión de la verdad histórica y el nuevo tratado". El ex presidente chileno, Patricio Aylwin, fue electo presidente de la comisión y se invitó a dirigentes de las organizaciones más radicales, entre estos el dirigente del "Consejo de Todas las Tierras", Aucán Huilcamán. Sin embargo, en la primera reunión de esta comisión el 12 de marzo de 2001 los representantes más radicales del movimiento no estuvieron presentes (*El Mercurio* marzo 13, 2001).

Fuentes

El Diario Austral
El Mercurio
El Metropolitano
La Tercera
El Siglo
El Sur

Ver también proyecto **Nuke Mapu**, http://www.soc.uu.se

AUSTRALIA Y
EL PACIFICO

AUSTRALIA Y EL PACIFICO

AUSTRALIA

El año pasado ha habido tres procesos relacionados en Australia. Uno es el repudio del gobierno de Howard del escrutinio internacional de los derechos humanos en general y de las Naciones Unidas en particular. Otro es el clímax de los 10 años de trabajo del Consejo para la Reconciliación Aborigen y la evolución de la *reconciliación* negro-blanco en la cual se ha centrado. El tercero lo podríamos llamar el *síndrome de la celebración* en el cual los australianos reflexionan sobre su pasado y su presente. Las celebraciones festejan los cien años de la constitución de Australia que une seis ex colonias británicas en un país, el nuevo siglo, el nuevo milenio y las Olimpíadas de Sydney.

Rechazando al mundo

La federación, es decir, la unión constitucional de seis colonias el 1 de enero de 1901, tenía afanes raciales en su seno. No sólo los británicos e irlandeses eran recién llegados que usurparon las tierras, las aguas dulces y las costas de sus habitantes *aborígenes* e *isleños* del Estrecho Torres, sino que los nuevos australianos temían los efectos morales (!) y sociales y la posible conquista por parte de los pueblos de tez oscura del Pacífico Sur y las poblaciones matizadas de Asia hacia el norte. *Vis-à vis* los aborígenes e isleños del Estrecho Torres, el nuevo gobierno australiano no tenía ningún poder y, por cierto, estaba constitucionalmente prohibido ejercerlo. Las ex colonias, rebautizadas "estados" desde 1901, tenían el poder absoluto y, dado que la agricultura, el asentamiento, el pastoralismo y la minería eran las claves de los medios de subsistencia e ingresos del estado, los pueblos indígenas fueron sacados del medio más o menos brutalmente.[1] Recién en 1967 el gobierno nacional obtuvo el poder en principio a través de un referéndum para actuar con respecto a estos asuntos, pero desde entonces los ha dejado mayormente en manos de los estados. El referéndum fue en sí mismo en parte una respuesta a las percepciones internacionales de Australia y su tratamiento de los aborígenes como racista.

Desde la decisión *Mabo* de la Suprema Corte en 1992 que reconoció en principio los derechos territoriales de los isleños del Estrecho Torres y de los aborígenes, muchos políticos blancos han tratado de avivar la ansiedad de los blancos. Señalar a los negros como amenaza, alentar los temores

BEST COPY AVAILABLE

MAR DE TIMOR
OCEANO PACIFICO
TERRITORIO DEL NORTE
QUEENSLAND
AUSTRALIA OCCIDENTAL
AUSTRALIA DEL SUR
NUEVA GALES DEL SUR
VICTORIA
OCEANO INDICO
TASMANIA

blancos de que ellos se apoderarán de su casa y propiedad, o que se necesitan más leyes y policía para encarcelarlos porque están desempleados y roban o son violentos, o que su engullimiento de los dólares impositivos blancos es inapropiado porque ellos son simplemente malas personas que se niegan a hacer nada por sí mismos... estos han sido temas políticos explícitos o implícitos a nivel estatal, del Territorio del Norte y del gobierno federal. Sin embargo, al mismo tiempo, los australianos se han enterado a través de los medios de difusión, visitantes y documentales de que otros países como en el caso de Australia –especialmente Nueva Zelanda, Canadá y los EE.UU.- han estado discutiendo los derechos políticos y legales indígenas y se han desplazado hacia posiciones que implican mayor control indígena de sus propias vidas, tierras y costas.

En este contexto, el gobierno de Howard (electo en marzo de 1996) ha conducido una reacción nacional contra el renacimiento indígena y lo que llama "la industria aborigen". Howard, quien ha sido su propio ministro a cargo de los asuntos aborígenes e isleños[2], ha evitado generalmente el debate político sobre temas indígenas. Se ha contentado con consignas y trivialidades anticuadas, y lo abrupto de su lenguaje y respuestas a las reformas o reconocimientos propuestos por o para los aborígenes dejan

BEST COPY AVAILABLE

traslucir su desdeño y falta de comprensión. Cuando los líderes aborígenes comenzaron a viajar al exterior para explicar su situación y pedir apoyo externo, él lo calificó de "maniobras sensacionalistas". Por supuesto, su propio gobierno recoge información sobre temas indígenas en el exterior.

En el 2000, Howard dio un paso más en su visión del mundo. Como ya hemos informado antes (*El Mundo Indígena, 1999-2000*), advirtió a Kofi Annan en su llegada a Australia de no hablar de las políticas del Territorio del Norte relativas a los aborígenes. Cuando Kofi Annan, con mucho tacto, permaneció en silencio, siendo el objetivo de su visita agradecer a Australia por el apoyo brindado a la ONU en Timor Oriental, Howard alegó en público que su silencio probaba que la ONU no encontraba ningún defecto en las prácticas australianas de los derechos humanos. Esto no era cierto, por supuesto. Una serie de foros de la ONU encontraron defectos en las políticas de Australia (y en su torpe manejo de los procedimientos internacionales y de la discusión concerniente a los mismos). El 29 de agosto de 2000, Howard envió tres ministros a decir a los medios de difusión que Australia ahora se rehusaría a cooperar con la ONU en asuntos internos indígenas y otros asuntos de derecho.[3] El mismo Howard fue a la ONU en Nueva York y anunció su política. La doctrina Howard es que las decisiones de los gobiernos federal, estatales y territoriales australianos están más allá del escrutinio externo, pero que Australia, siendo un país moralmente superior, continuará criticando a otros.

La pregunta es si esto fue un una medida preventiva antes de que alguna nueva atrocidad atrajera la crítica mundial. La entrega de los aborígenes del Territorio del Norte y sus tierras y costas al gobierno profundamente antiaborigen del Territorio del Norte, es decir al otorgarle estatus estatal como regalo para "celebrar" la Federación podría ser una de esas posibilidades.

Reconciliación

El proceso formal de Reconciliación llegó a su clímax el 27 de mayo de 2000, con la presentación de documentos al Primer Ministro en la Ópera de Sydney en presencia de los líderes políticos blancos del país. Tanto los blancos como los negros abundaron en discursos impresionantes. Howard no gritó a la audiencia como lo había hecho tres años antes en la anterior convención de Reconciliación, pero de todas maneras ejerció una resistencia silenciosa. Los líderes aborígenes y el Consejo para la Reconciliación Aborigen se habían enfurecido tanto en las semanas y meses precedentes con la intransigencia del gobierno de Howard sobre temas de interés que decidieron hacer más fuerte el tono de su declaración. La Declaración del Consejo dice:

MURRAY
DOWNS
Imangara
NEUTRAL
Junction

Los aborigenes ven con orgullo su bandera. Foto: archivo de IWGIA

Joven aborigen pintado para la danza. Foto: archivo de IWGIA

Nosotros, los pueblos de Australia, siendo de diversos orígenes, nos comprometemos a seguir juntos en un espíritu de reconciliación.

Valoramos el estatus especial de los pueblos aborígenes e isleños del Estrecho Torres como los dueños originales y custodios de tierras y aguas.

Reconocemos que esta tierra y sus aguas fueron ocupadas como colonias sin tratado ni consentimiento.

Reafirmando los derechos humanos de todos los australianos, respetamos y reconocemos la continuidad de las leyes consuetudinarias, creencias y tradiciones.

Mediante la comprensión de la relación espiritual entre la tierra y sus primeros habitantes, compartimos nuestro futuro y vida en armonía.

Nuestra nación debe tener el coraje de poseer la verdad, de curar las heridas de su pasado para que podamos seguir juntos en paz con nosotros mismos.

La reconciliación debe vivir en los corazones y mentes de todos los australianos. Se han dado muchos pasos, quedan aún muchos pasos por dar al aprender nuestras historias compartidas.

Mientras transitamos el camino de la curación, una parte de la nación se disculpa y expresa su dolor y lamenta sinceramente las injusticias del pasado para que la otra parte acepte las disculpas y perdone.

Deseamos un futuro en el que todos los australianos gocen de sus derechos, acepten sus responsabilidades y tengan la oportunidad de desarrollar sus potenciales plenamente.

Por lo tanto, nos comprometemos a detener la injusticia, superar las desventajas y respetar que los pueblos aborígenes e isleños del Estrecho Torres tienen el derecho a la autodeterminación en el seno de la vida de la nación.

Nuestra esperanza es una Australia unida que respete nuestra tierra; valore el patrimonio de los aborígenes e isleños del Estrecho Torres; y otorgue justicia y equidad para todos.

El gobierno de Howard consideró esta declaración demasiado radical en varias partes como para aceptarla. El documento fue acompañado de cuatro estrategias para encarar la desventaja social y económica y el trabajo de Reconciliación en el futuro, y una Estrategia Nacional para Promover el Reconocimiento de los Derechos Aborígenes y de los Isleños del Estrecho Torres.[4]

Cuando el Consejo de Reconciliación entregó su informe final al gobierno en diciembre de 2000, las dos últimas recomendaciones eran las más cruciales:

> 5. *Que cada gobierno y parlamento:*
>
> - *Reconozca que esta tierra y sus aguas fueron ocupadas como colonias sin tratado o consentimiento y que para promover la reconciliación sería sumamente deseable si existieran acuerdos o tratados; y*
> - *Negocie un proceso mediante el cual esto pueda ser logrado para proteger la posición política, legal, cultural y económica de los pueblos aborígenes e isleños del Estrecho Torres.*
>
> 6. *Que el Parlamento [nacional] de la Commonwealth promulgue una legislación (para lo cual el Consejo presenta un proyecto en este informe) a fin de establecer un proceso que una a los australianos en forma de un acuerdo, o tratado, mediante el cual puedan resolverse los temas irresueltos de la reconciliación.*

Un *Foro de la Federación* concluyó los 10 años de trabajo de lo que se podría calificar como el organismo de reconciliación del "hombre blanco", la Fundación Constitucional del Centenario, creada para construir una mayor cohesión nacional, identidad y propósito mediante la discusión y la reforma constitucional. Como el Consejo de Reconciliación, el CCF acabó su misión "no con estrépito sino con un sollozo". Sin embargo, el resumen del Foro incluyía una recomendación:

> *Se necesita un amplio debate nacional dentro del marco del proceso de reconciliación sobre la representación de la población indígena de Australia. En este contexto, Australia debería considerar como una opción el reconocimiento dentro de la estructura de la federación australiana de las naciones aborígenes e isleñas del Estrecho Torres.*[5]

Celebraciones

El deporte es un asunto fundamental de orgullo e identidad nacional en Australia hasta un grado desconocido en otros países. El deseo de los líderes políticos de ser fotografiados con los héroes del deporte llegó a su zenit deslumbrante en las Olimpíadas de Sydney, en septiembre de 2000, cuando el Primer Ministro intentó reunirse con cada medallista australiano como el más ferviente "vitoreador", como él mismo lo expresó.

Las Olimpíadas, especialmente las ceremonias de apertura y clausura que pusieron en vitrina el arte representativo y las referencias culturales australianas –algunas graciosas, otras solemnes- fueron importantes para observar cómo los australianos se veían a sí mismos y cómo se mostraban al mundo. Todos los actores y espectadores comprendieron esto. Por lo tanto, la prominencia otorgada a los artistas, motivos y atletas aborígenes e isleños, especialmente a la corredora Cathy Freeman, fue significativa. Muchos australianos consideran las banderas y la afirmación aborígenes e isleñas como no-australianas o anti-australianas. No obstante, para la mayoría son meras expresiones de orgullo y no representan una amenaza.

Las diversas celebraciones del 2000-2001 y la urgencia de tantos autores, artistas, académicos, comentadores y personalidades públicas de pensar sobre el pasado y el presente han convertido inevitablemente al tema aborigen e isleño en un asunto central. Con el reciente bicentenario del primer asentamiento blanco en Sydney en 1788 y la cantidad de libros y revaluaciones entonces publicadas, Australia ha tenido más que su justa medida de excusas para reflexionar sobre sí misma. Howard y muchos como él consideran la autoreevaluación nacional como innecesaria o incluso engañosa. Según su punto de vista, aquellos que hacen hincapié en las "tachas" de Australia, como Howard a llama las pasadas masacres de aborígenes, se odian a sí mismos. Están traicionando a su país que es "magnífico" en una infinidad de formas que enumera en sus discursos. Su visión de Australia fue revelada aún más cuando sorprendentemente durante las Olimpíadas nos dijo cómo los visitantes extranjeros se le habían acercado y le había dicho: "Sr. Howard, su pueblo australiano es agradable y amistoso". Con tal líder muchos australianos se quejan de que su país sea desmerecido, pero sus comentarios sobre temas aborígenes han sido el punto particular del malestar público.

Cuando parecía que el país estaba construyendo un consenso como una sociedad confidente, volcada hacia el exterior, inclusiva, sofisticada, internacionalista y compasiva, el gobierno de Howard detuvo bruscamente este proceso. Su impronta de nacionalismo es fóbica, no mira hacia adelante. Pero para cualquier tipo de identidad nacional, los aborígenes e isleños del Estrecho Torres son centrales. El gobierno de Howard va a Ginebra a decir a la ONU que las comunidades indígenas están sumidas en la miseria y que la culpa es de las pasadas políticas de "autodeterminación"[6], mientras que la retórica más extrema de la derecha populista de "One Nation" (Una Nación) es más obvia para entender el concepto de la legitimidad moral de ser los primeros ciudadanos, sostenido por los aborígenes e isleños.[7] La Derecha tiene ahora una pequeña banda confiable de columnistas de periódicos, algunos de ellos académicos, así como también la publicación *Quadrant* que ha estado desvariando sobre los aborígenes y tratando de negar o minimizar su sufrimiento e historia desde que el ex editor fue expulsado hace algunos años por ser demasiado compasivo con respecto a los infortunios indígenas. En otras palabras, la afirmación nacional que había estado creciendo bastante saludablemente en Australia ahora se ha enredado en "las guerras de la cultura" de los intelectuales y las más extraviadas perspectivas y revisionismo de la Derecha populista.

¿Y ahora qué?

Mientras que los recién llegados a Australia luchan con sus visiones de quiénes son, quiénes eran, y en quiénes se pueden transformar, la agenda política indígena está evolucionando más seguramente. La intransigencia de Howard de estos últimos años (ver especialmente *El Mundo Indígena 1998-99*) ha alentado, de alguna manera, la unidad y un enfoque más serio de los líderes aborígenes sobre un "tratado" o como se quiera llamar a un tal documento o documentos.[8]

En todo el espectro indígena, ya sea ideológico o regional, se está ampliamente de acuerdo en un proceso negociado que conduzca a un tratado o a un marco similar. Ahora hay un sitio web[9] y se está ganando impulso. Mientras tanto, en regiones como Estrecho Torres, la Península de Cape York y Australia Central el trabajo de base en las comunidades indígenas en busca de socios oficiales o aliados está impulsando el autogobierno, en un intento desesperado de encarar los males que los programas del gobierno han fracasado tan espectacularmente en solucionar.

El gobierno de Howard ha intentado rechazar y hacer retroceder el progreso logrado en el campo de los derechos y la política indígenas durante los 30 años precedentes por gobiernos que incluyen al gobierno Liberal de Fraser, del cual Howard era un miembro destacado. Howard, como su heroína Margaret Thatcher, cree que la sociedad y la cultura son parte de la niñez de uno, no algo comprensible en un sentido más amplio.

Con la cumbre mundial de la ONU contra el racismo en Sudáfrica, el encuentro de los jefes de gobierno de la Commonwealth Británica en Brisbane y las elecciones nacionales australianas en algún momento de 2001, habrá muchos contextos en los cuales los agravios y necesidades de los aborígenes e isleños del Estrecho Torres se verán enfrentados contra un gobierno nacional intransigente.

Notas y Referencias

[1] Para una historia general de este afán, ver Day D, 1997: *Claiming a Continent: a new history of Australia*, Angus & Robertson (HarperCollins), Sydney. Para historias regionales específicas ver Reynolds H, 1987: *The Law of the Land*, Penguin, Melbourne; y Reynolds H, 1995: *Fate of a Free People*, Penguin, Melbourne. Otras obras de Reynolds como los libros de Frontier son también sumamente recomendables.

[2] En este informe "isleño" significa específicamente isleños del Estrecho Torres, no isleños del Mar del Sur en general.

[3] Su comunicado de prensa fue titulado eufemísticamente, "Mejorar la Efectividad de los Comités de las Naciones Unidas" y era tan obscuro en su redacción que uno sacaba poco en limpio al leerlo. Los ministros, según los periodistas, estaban terriblemente turbados en su conferencia de prensa porque sabían, presumiblemente, incluso si el Primer Ministro no lo sabía, qué atroz tontería era todo eso.

[4] Por más información ver el sitio web del Proceso de Reconciliación: http://www.reconciliation.org.au/

[5] Párrafo 2.4.3. del Communiqué, *Federalism Forum*, octubre 19-20, 2000

[6] Esos comentarios muestran que el gobierno de Howard no tiene ninguna idea de lo que significa la autodeterminación, aparte de todo los demás. Para el discurso de la ONU ver, julio 29, 1999, declaración del gobierno australiano presentada por el ministro de asuntos indígenas John Herron, Internet: http://www.atsia.gov.au/fr_press.html

[7] Jull P, 2000: 'Hansonism and Aborigines and Torres Strait Islanders', *The Rise and Fall of One Nation*, ed. M Leach, G Stokes & I Ward, University of Queensland Press, Brisbane, 206-219.

[8] Jull P, 2000: 'Treaty, Yeah, Treaty Now!' *Arena Magazine*, No. 48 (agosto-septiembre 2000), 20-21.

[9] http://treatynow.org/

AOTEAROA (NUEVA ZELANDA)

Las elecciones generales de fines de 1999 contemplaron un cambio de gobierno con la derrota de la coalición liderada por el Partido Nacional. El sistema electoral de Nueva Zelanda, de representación proporcional mixta, significa que es improbable que un solo partido político consiga alguna vez votos suficientes para formar un gobierno de mayoría. El Partido Laborista, de centro-izquierda, obtuvo la mayoría de los escaños pero no los suficientes para formar gobierno. Por lo tanto formó un gobierno de coalición con el izquierdista Partido de la Alianza. Los laboristas se aseguraron la victoria debido, en gran medida, al abrumador apoyo de los votantes *maorí*. Con este apoyo los laboristas obtuvieron los 6 escaños reservados a los maoríes en el Parlamento. En 1996 los laboristas habían perdido todos los escaños maorí que pasaron al Primer Partido de Nueva Zelanda después de haber dado continuamente por descontado el voto maorí y haber elegido candidatos de pobre actuación para contender en las elecciones. El sistema mixto de representación proporcional de miembros ha llevado a que más maorí fueran electos al parlamento. Actualmente hay 17 miembros maorí en el parlamento de los cuales 10 son miembros del gobierno.

La política de "cerrar las brechas"

Una de las políticas electorales claves del gobierno era cerrar las brechas sociales y económicas entre los maorí y otros neozelandeses. En el documento político pre-electoral del Partido Laborista, la líder de la oposición, Helen Clark, fue inequívoca en cuanto a su política:

> *"Mi compromiso con esas políticas es absoluto. Cerrar las brechas entre los maorí y otros neozelandeses es un objetivo fundamental del nuevo gobierno laborista."*[1]

El gobierno anunció incluso su nueva política en la reunión del Grupo de Trabajo de las Naciones Unidas sobre Poblaciones Indígenas, en Ginebra, en julio de 2000, diciendo que:

> *"Una importante prioridad del nuevo gobierno de Nueva Zelanda es cerrar las brechas entre los maorí y los no-maorí".*[2]

El término, en sí mismo, no era nuevo y había sido usado, en realidad, por el Ministerio de Desarrollo Maorí como parte de su monitoreo de programas para maorí durante la administración previa. Después de la elección, la Primera Ministra Helen Clark confirmó su compromiso con la política y formó un poderoso comité del gabinete encabezado por ella misma para monitorearlo. Además, se notificó a los departamentos del gobierno que su actuación para implementar la política iba a ser monitoreada y los jefes ejecutivos iban a tener cláusulas de actuación incluidas en sus contratos. El presupuesto destinó $258 millones por año durante 4 años para cerrar las brechas.[3]

Al comienzo hubo un apoyo general para el programa. Sin embargo, *pakeha* – el término maorí para un neozelandés de ascendencia europea- se alarmó cada vez más cuando el gobierno quitó el velo a diversos programas de acción afirmativa. Primero, y en forma muy controversial, un proyecto de ley del gobierno presentado al parlamento incluía una previsión en la nueva legislación de la salud que requería que la ley fuera interpretada en forma coherente con el Tratado de Waitangi.[4] Gran parte de la opinión pública creyó que tal cláusula daría preferencia a los maorí con respecto a la atención de la salud. Fue enmendada y aclarada pero el daño ya estaba hecho. Otras iniciativas dirigidas hacia los maorí incluían campañas contra el cigarrillo (un tercio de todas las mujeres maorí mueren de enfermedades relacionadas con el tabaco), programas de protección contra la hepatitis B, la diabetes y asesoramiento libre sobre la anticoncepción. La oposición se insertó en el debate buscando ventajas electorales sobre lo que dijo era una legislación racista. El Conciliador de Relaciones Raciales, un organismo estatutario independiente, advirtió que la discriminación positiva incitaría la división racial y el resentimiento. En su informe anual al parlamento dijo:

> *"La gente considera que las políticas del gobierno estaban 'alcahueteando' a los maorí con más fondos públicos, siguiendo grandes ajustes del Tratado de Waitangi y programas de acción afirmativa".*[5]

También agregó que:

> *"Las políticas de reducción de la brecha tendrían probablemente legitimidad en la percepción pública si fueran dirigidas contra la pobreza, en vez de hacia grupos étnicos particulares".*[6]

Esto vino inmediatamente después de la publicación de un informe de un alto funcionario público que dijo que la pobreza y la privación estaban basadas en la clase y no en la etnia.[7] Esto pareció socavar el programa del gobierno de centrarse en los maorí en vez de aquellos que sufren la pobreza. Frente a estos informes y la presión pública, el gobierno retrocedió, abandonando formalmente el título "cerrando las brechas". El programa fue ampliado hasta incluir a todos los desfavorecidos neozelandeses y no sólo a los maorí. En octubre, el Primer Ministro destacó que cerrando las brechas trataba:

> *"No sobre brechas entre los maorí y los pueblos del Pacífico y otros sino sobre la pobreza".*[8]

Política de Ajuste del Tratado de Waitangi

Otra de las promesas electorales claves del gobierno a los maorí fue su política de ajuste del Tratado de Waitangi por quebrantamientos del mismo. Su política electoral establecía que:

> *"El Partido Laborista se compromete con el proceso de ajuste del Tratado y a alcanzar un justo y equitativo arreglo caso a caso".*[9]

A pesar de 10 años en la oposición, al gobierno entrante le llevó 8 largos meses desarrollar y lanzar su política. Esto fue hecho sin ninguna consulta con los maorí. Se adoptaron 6 principios claves para guiar al gobierno en la negociación de arreglos por quebrantamientos del Tratado de Waitangi. Estos eran:

- Buena fe
- Restauración de la relación

- Justo resarcimiento
- Justicia entre los demandantes
- Transparencia
- Negociaciones directas con la Corona[10]

Otros principios claves enunciados eran:

- La derogación del concepto de cobertura fiscal[11]
- Las demandas de petróleo y gas y otros minerales de la Corona fueron desechadas
- La tierra para conservación (tierra silvestre) no sería inmediatamente disponible para ser devuelta en concepto de ajustes del Tratado[12]
- Se realizaría una revisión exhaustiva de la Ley del Tratado de Waitangi, la cual estableció el Tribunal de Waitangi y fue la fuente de su jurisdicción (para investigar las violaciones del Tratado de Waitangi).
- Los arreglos existentes del Tratado de Waitangi serían usados como puntos de referencia para soluciones futuras.

Los maorí criticaron abiertamente la política, diciendo que era muy poco diferente a la de gobiernos previos. Dadas las expectativas maorí la política era inservible. Un líder maorí resumió el sentimiento general cuando dijo:

> *"Esto no tiene sentido. Significa simplemente que sigue el status quo"*[13]

Se entiende que los miembros maorí del gobierno estaban particularmente molestos sobre la exclusión de los recursos naturales de los ajustes del Tratado. Las tribus que tenían demandas sobre recursos naturales anteriores al Tribunal de Waitangi maldecían en su condena a la política.

El Ministro de Justicia fue también encargado de elaborar una política sobre demandas sobre ríos, lagos y costa. Esto ha pospuesto una inevitable acción definitiva de las tribus que tienen demandas sobre los ríos. En 1999 el Tribunal Waitangi emitió 2 informes sobre ríos.[14] Concluyó que según los términos del Tratado de Waitangi, las tribus tenían garantizada una posesión plena, exclusiva e inalterada de sus propiedades tradicionales. El Tribunal concluyó que las tribus tenían derechos propietarios sobre los ríos, análogos a los derechos de propiedad basados tanto en el Tratado de Waitangi como en la doctrina del derecho consuetudinario del título aborigen. En ambos casos recomendó a la Corona que pagara indemnización por la apropiación y uso de un recurso que no poseía. El gobierno se negó a hacerlo.

El gobierno también declaró que quería que los demandantes entraran en negociaciones directas con la Corona, pasando por alto al Tribunal Waitangi, el cual dijo, era demasiado lento. Actualmente hay cientos de demandas esperando ser oídas por el Tribunal Waitangi. No se espera poder completarlas hasta el 2014.

El enfoque y la crítica del gobierno y la política de revisar el mismo Tribunal fueron considerados por muchos como un intento deliberado para socavar el Tribunal. Una de las principales razones de las demoras ha sido la constante negativa de los sucesivos gobiernos para financiar el Tribunal a un nivel necesario para que pudiera realizar sus deberes estatutarios. El Tribunal requirió 2 millones de $NZ extra pero le fueron negados. Como consecuencia, la cantidad de días de audiencia fue reducida y las demandas fueron puestas en naftalina. Esta negativa era completamente contraria a la promesa preelectoral del gobierno de:

> *"Asegurar que el Tribunal Waitangi disponga de los recursos adecuados".*[15]

En un discurso en una ceremonia celebratoria del 25º aniversario del Tribunal (octubre de 2000) el Juez del Tribunal Supremo Joseph Williams[16] respondió a estas preocupaciones. Destacó que el proceso del Tribunal daba legitimidad a los ajustes del Tratado y:

> *"Aumentaba la probabilidad de un arreglo según mi experiencia"*

También destacó que el Tribunal necesitaba ser financiado para hacer su trabajo.[17]

La demanda de petróleo y gas

En 1999 una tribu presentó al Tribunal una demanda del Tratado[18] sobre el petróleo y el gas ubicados debajo de sus tierras tradicionales. Bajo la actual legislación, la Corona posee todos los minerales. Se otorgó urgencia a la demanda y se estableció una audiencia con el Juez Williams. Sin embargo, antes de que la audiencia hubiera comenzado, el ministro del gabinete responsable de los minerales de la Corona declaró públicamente que la demanda era:

> *"Una pérdida de tiempo"*[19]

Dijo que el gobierno retendría la propiedad independientemente de lo que el Tribunal Waitangi dijera.[20] Otra vez, esto pareció darse de cara contra su propio principio clave de buena fe.

El Juez Williams no se dejó impresionar y emitió un recordatorio de corte al gobierno de las implicaciones constitucionales de predeterminar un caso.[21]

La cuestión sobre la propiedad de recursos naturales no es una cuestión que el gobierno sea capaz de poner en la canasta de asuntos "demasiado difíciles" durante mucho tiempo más. Esto va a poner a prueba la lealtad y efectividad de los miembros maorí del Parlamento.

Ajustes del Tratado de Waitangi

La Corona y los demandantes han firmado recientemente las Actas de Ajuste, solucionando 2 demandas de tierra sobre términos acordados.[22] Ambas siguieron a arreglos anteriores y se dio una disculpa de tipo cultural y arreglos monetarios de 2,6 y 15,25 millones de NZ$, respectivamente. Se han firmado seis Principios de Ajustes entre la Corona y los demandantes pero todavía están en negociaciones antes de poder firmar las Actas de Ajuste. Unos 13 demandantes están en negociaciones previas y 6 demandas todavía están ante el Tribunal Waitangi.[23]

Pesca marítima

En 1992 el gobierno finalizó un arreglo controversial con negociadores maorí sobre todo el Tratado de Waitangi y los derechos consuetudinarios sobre los pesqueros marinos. Esto fue hecho en respuesta a un litigio que amenazó el esquema de cuotas pesqueras del gobierno como instrumento para conservar y manejar las poblaciones de peces. Bajo los términos del arreglo, el gobierno proveyó dinero para la compra de Sealords Fishing Company que tenía el 23% de la cuota pesquera. Esto cumpliría con la obligación de la Corona según el Tratado de Waitangi. La cuota pesquera sería luego adjudicada a tribus en una base a ser determinada por una comisión pesquera independiente maorí.

No obstante, una serie de tribus se opusieron al arreglo y la concomitante extinción de los derechos del Tratado y consuetudinarios. Expresaron que los negociadores no tenían mandato para firmar y entregar sus derechos. Una acción judicial subsecuente no logró detener el arreglo. En 1993, se presentó una comunicación al Comité de Derechos Humanos de las Naciones Unidas bajo el Protocolo Opcional del Convenio de Derechos Civiles y Políticos. En noviembre de 2000, el Comité declaró que sobre la base de los hechos no había habido violación del Convenio.[24]

Cuando se nombró una Comisión de Pesca Maorí bajo el arreglo de 1992 para elaborar un esquema para la distribución de la cuota pesquera a las tribus, se pensó inicialmente que esto tomaría solamente un corto tiempo. Sin embargo, después de 8 años de continuo y terriblemente oneroso litigio, no se ha realizado ninguna adjudicación. El litigio intertribal existe entre tribus que quieren que la adjudicación sea realizada sobre la base de la población y otras que la quieren sobre la base de su línea costera. Para complicar aun más las cosas, grupos maorí pantribales urbanos se han unido al litigio alegando que ellos son una moderna manifestación de una tribu y debería adjudicárseles cuotas. El nuevo Gobierno ha nombrado nuevos comisionados para llegar a un compromiso aceptable. Los millones de dólares gastados en litigio demuestran los peligros de acuerdos globales de rápido arreglo.

Notas y Referencias

[1] He Putahitanga Hou - Labour on Maori Development 16 de octubre 2000.

[2] Declaración de Nueva Zelanda al Grupo de Trabajo de las Naciones Unidas sobre Poblaciones Indígenas, Ginebra, 24-28 de julio del 2000.

[3] *New Zealand Herald* 30 de diciembre de 2000.

[4] El Tratado de Waitangi fue firmado en 1840 por una serie de tribus maorí y la Corona Británica. Para un excelente análisis maorí ver el sitio Tino Rangatiratanga en http://aotearoa.wellington.net.nz

[5] *NZPA* 25 de noviembre de 2000.

[6] Ibid.

[7] *Maori Socio-economic Disparity.* Simon Chapple, Department of Labour, 2000.

[8] *New Zealand Herald* 30 de diciembre 2000.

[9] He Putahitanga Hou *2000:9.*

[10] Por más detalles y para una explicación del término Corona ver: www.exective.govt.nz and www.ots.govt.nz

[11] La cobertura fiscal fue introducida en 1994 por el entonces Gobierno Nacional. Proponía limitar todas las compensaciones a los maorí por todos los quebrantamientos del Tratado de Waitangi a $1.000 millones de dólares neozelandeses. Esto condujo a protestas sin precedentes, ocupaciones de tierras y fue unánimemente rechazado por todas las tribus.

[12] Esto significaba que incluso tierras confiscadas por el gobierno durante la guerra de las tierras en los años 1860 en violación del Tratado de Waitangi, no serían devueltas. Como resultado las tribus quedaron sin tierras.

[13] *Evening Post* 21 de julio 2000.

[14] WAI 16: *Whanganui River Report* y WAI 212:*Te Ika Whenua Report.*

[15] He Putahitanga Hou 2000.

[16] Discurso realizado en el 25 aniversario del Tribunal Waitangi, 11 de octubre. El Juez Williams era un muy experimentado y brillante abogado del Tratado antes de ser ascendido al Tribunal Superior.

[17] Ibid.

[18] WAI 793 Nga Ruahine Oil and Gas claim.

[19] *Daily News* 17 de octubre, 2000.

[20] Los poderes del Tribunal Waitangi son fundamentalmente recomendatorios y no son obligatorios excepto en circunstancias muy limitadas.

[21] *Dominion* 18 de octubre 2000.

[22] Te Uri o Hau y WAI 33: *Pouakani Report.*

[23] Ver www.ots.govt.nz por más información.

[24] *Mahuika and others v. New Zealand* CCPR/C/70/547/1993.

LAS ISLAS DEL PACIFICO

El año 2000 trajo nuevas esperanzas pero también nuevos desafíos a los 5 millones de indígenas del Pacífico que viven diseminados en más de 6.000 islas.

Veinte de las cincuenta naciones isleñas del Pacífico han obtenido su independencia política durante las últimas décadas (1960-80) mientras que las restantes colonias todavía están luchando por su derecho a la autodeterminación y la independencia. Pero como se puede leer en los siguientes informes de los diferentes países, las dificultades y sufrimientos de los pueblos indígenas del Pacífico trascienden las fronteras coloniales y reafirman las muchas similitudes que comparten las diversas islas. Aquí deberían destacarse tres temas que se entrecruzan:

Mujeres

El tema de la violencia contra las mujeres indígenas y el abuso sexual de las mujeres y niños siguen siendo de creciente preocupación, particularmente en situaciones de conflictos armados. En Bougainville, las Islas Salomón y Papua Occidental, las mujeres han informado que durante los conflictos armados se utilizó la violación y la violencia sexual contra ellas.

No obstante, las mujeres siguen jugando un papel importante, asumiendo las luchas por la paz dentro de las comunidades indígenas del Pacífico. Su fuerza ha sido visible en la promoción de las iniciativas de construcción de paz en situaciones de inestabilidad política y social como la experimentada en Bougainville, las Islas Salomón y Fiji. Sin embargo, a pesar de su rol clave en la facilitación del proceso de paz, las mujeres siguen siendo marginadas como participantes en las negociaciones concretas entre las partes en conflicto.

Medio ambiente

La creciente presión de hoy sobre el medio ambiente en el Pacífico está amenazando claramente la misma existencia de las culturas y comunidades indígenas de la región. El concepto indígena de "*vanua*" (tierra), el cual es igualmente compartido por todas las comunidades indígenas del Pacífico, implica que los seres humanos y el medio ambiente son inseparables. Como tal, la destrucción de una de las partes significa el mismo destino para la otra parte. En algunos lugares del Pacífico, los espacios vitales, tierras y aguas de los pueblos indígenas se han convertido en el blanco de las naciones industrializadas para la realización de pruebas nucleares y el depósito de desechos radioactivos resultantes de las operaciones industriales o militares. Además, las amenazas impuestas por la extracción de recursos naturales (minería, extracción maderera, pesca, extracción de coral, etc.) por las corporaciones transnacionales y los efectos emergentes de cambios climáticos y la elevación del nivel del mar están también teniendo efectos devastadores sobre los ecosistemas, la cultura y la subsistencia de los pueblos indígenas del Pacífico.

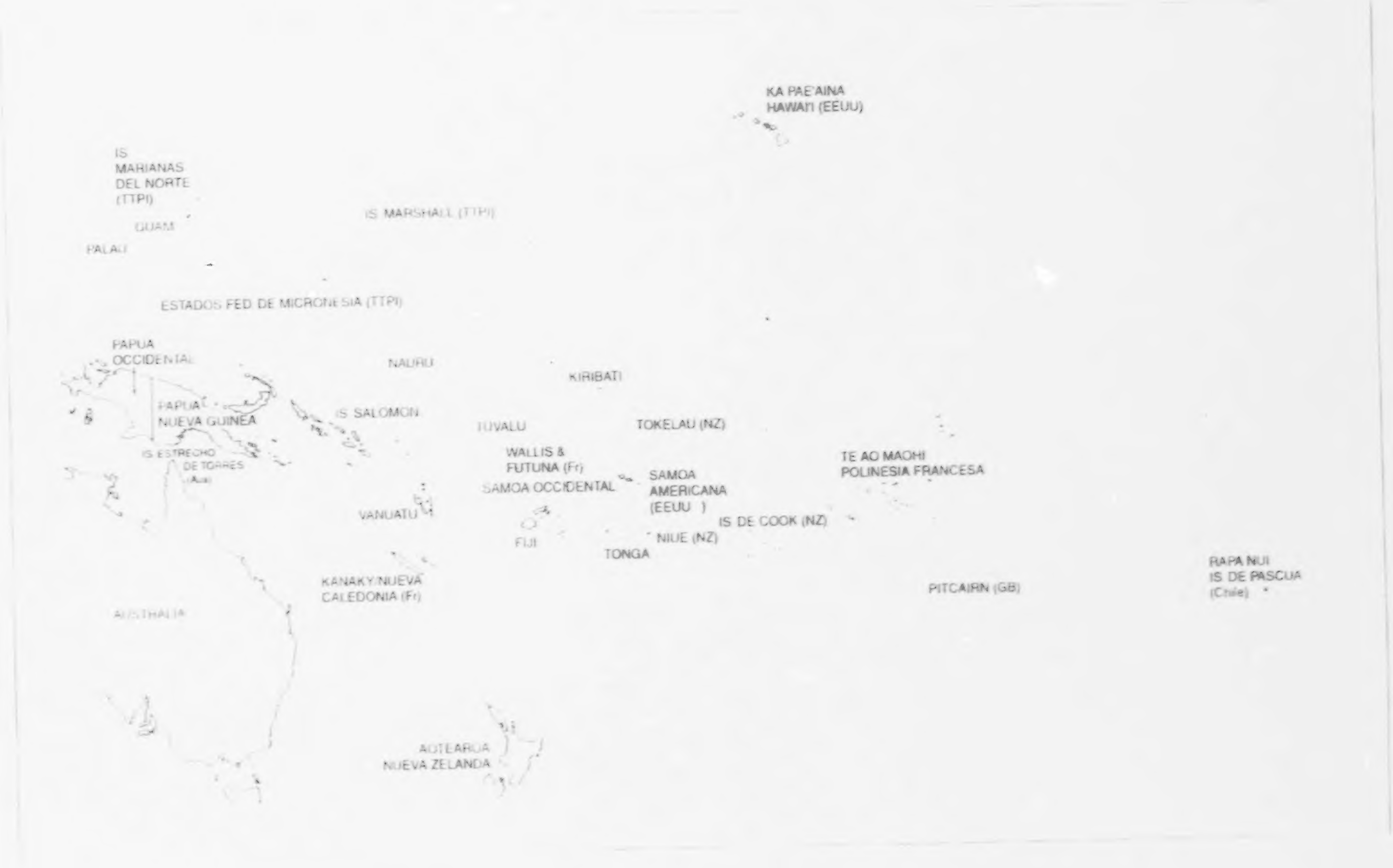
Desmilitarización

La mayoría de los analistas estratégicos de la región han notado que la principal amenaza contra la seguridad nacional en las islas del Pacífico es más bien interna que externa. Las doctrinas militares se han volcado internamente para enfrentar las amenazas a la seguridad del Estado que provienen de: políticos y facciones políticas fallidos; recursos y terratenientes; grupos indígenas y movimientos por los derechos democráticos. Las fuentes de provisión de armas es un factor de igual preocupación. Los soldados que se apoderaron del Parlamento de Fiji en mayo del año 2000 fueron armados y entrenados por los mismos gobiernos que predicaban el buen gobierno y el retorno a la democracia – Australia, Nueva Zelanda, Estados Unidos, Gran Bretaña y Francia. Los más de 12.000 muertos en Bougainville, así como en Salomón y Fiji, fueron resultado del uso de municiones provenientes en última instancia de Australia. La creciente militarización del Pacífico continuará siendo una importante amenaza para la organización social, las luchas de poder y los sistemas de valores de los pueblos indígenas de la región.

PAPUA OCCIDENTAL

Durante el año 2000, los pueblos indígenas de Papua Occidental consolidaron sus esfuerzos y actividades para reafirmar su meta final de lograr la independencia. tanto nacional como internacionalmente.

El Primer Congreso Papuano Occidental, celebrado en febrero del año 2000, fue un hito en la determinación del proceso de unidad de diversas facciones que luchan por la autodeterminación. Este Congreso reafirmó su rechazo al resultado de la Ley de Libre Opción de 1969 y reiteró su voluntad de autodeterminación. El comunicado subrayó el consenso del Consejo de la manera siguiente:


KA PAE'AINA
HAWAI'I (EEUU)
IS MARIANAS DEL NORTE (TTPI)
IS MARSHALL (TTPI)
GUAM
PALAU
ESTADOS FED DE MICRONESIA (TTPI)
PAPUA OCCIDENTAL
NAURU
KIRIBATI
PAPUA NUEVA GUINEA
IS SALOMON
TUVALU
TOKELAU (NZ)
IS ESTRECHO DE TORRES (Aus)
WALLIS & FUTUNA (Fr)
SAMOA OCCIDENTAL
SAMOA AMERICANA (EEUU)
TE AO MAOHI
POLINESIA FRANCESA
VANUATU
FIJI
IS DE COOK (NZ)
NIUE (NZ)
TONGA
KANAKY/NUEVA CALEDONIA (Fr)
PITCAIRN (GB)
RAPA NUI
IS DE PASCUA
(Chile)
AUSTRALIA
AOTEAROA
NUEVA ZELANDA

BEST COPY AVAILABLE

- Que es nuestro deseo optar por la libertad y separarnos de la República de Indonesia, como fue comunicado al Presidente Habibie y miembros de su gabinete de reforma en enero del año 2000.
- Que buscaremos un diálogo de una forma pacífica y democrática para lograr el acuerdo del gobierno indonesio.

El Congreso eligió a Theys Eluay y Tom Beneal como jefes ejecutivos del Consejo del Presidium Papuano. Los 18 miembros del Presidium incluyen a representantes de iglesias, mujeres, terratenientes consuetudinarios, ex prisioneros políticos, estudiantes, jóvenes y profesionales.

Entre el 29 de mayo y el 4 de junio del año 2000 se celebró un segundo Congreso del Pueblo Papuano, mucho mayor, en la capital Port Numbay (Jayapura). Asistieron al mismo más de 3.000 delegados, incluyendo a representantes del gobierno central y de la administración provincial, líderes *papuanos* que viven en el exilio, simpatizantes de la *Organisasi Papua Merdeka* (OPM), así como observadores de Aceh y Riau. El 4 de junio de 2000, el Congreso Nacional emitió una Declaración de Independencia. El líder del Congreso, Theys Eluay, volvió a reiterar los deseos del Movimiento Papuano Occidental de proceder pacíficamente hacia la independencia.

Algunos países extranjeros, incluyendo aquellos que les fue permitido asistir al Congreso como observadores, emitieron inmediatamente declaraciones condenando la declaración de independencia y reiterando su apoyo a Indonesia. Australia, China, los EE.UU., Japón, Holanda y la Unión Europea expresaron que no reconocerían la independencia papuana y no interferirían en los asuntos internos de Indonesia.

No obstante, el Movimiento por un Pacífico Libre de Armas Nucleares e Independiente (NFIP), reconociendo la genuina aspiración de autodeterminación de los pueblos indígenas de Papua Occidental (abril, 2000), determinó a Papua Occidental como su campaña prioritaria sobre el tema de la descolonización y en septiembre de 2000, el Consejo Mundial de Iglesias y la Reunión de la Conferencia de Iglesias del Pacífico celebrada en Suva, Fiji, hicieron un llamado a los gobiernos del Pacífico para que apoyaran la re-inclusión de Papua Occidental en la lista de descolonización de las Naciones Unidas.

El Presidente de la República de Nauru, Bernard Dowiyogo, declaró también en varias ocasiones el apoyo a Papua Occidental, y en la Cumbre del Milenio de las Naciones Unidas, celebrada en Nueva York en septiembre del año 2000, tanto él como el Primer Ministro de Vanuatu, Barak Sope, plantearon el tema de Papua Occidental siendo los primeros países en declarar el apoyo a la independencia de Papua Occidental en las Naciones Unidas.

El apoyo de Nauru se hizo visible con la presencia de líderes claves de Papua Occidental en la delegación oficial de Nauru que asistió al 31º Foro del Pacífico Sur en Kiribati, en octubre del año 2000. Fue un momento histórico cuando el Foro aprobó una resolución sobre Papua Occidental, expresando sus *"profundas preocupaciones sobre la violencia pasada y reciente y la pérdida de vidas en la provincia indonesia de Irian Jaya (Papua Occidental)"*.

Hacia fines del año 2000 y comienzos de 2001 se había establecido por todos lados nuevos grupos y redes de solidaridad con Papua Occidental, especialmente en Australia, Nueva Zelanda, Estados Unidos y en toda Europa.

En octubre, el gobierno y el ejército indonesio aumentaron su violenta y sangrienta represión contra la afirmación papuana occidental de autodeterminación. Treinta personas resultaron muertas en disturbios después que la policía obligó a arriar la Bandera de la Estrella de la Mañana, el símbolo papuano de independencia. Un mes después, unos diez dirigentes del Consejo del Presidium de Papua Occidental, incluyendo a su Presidente, Theys Eluay, fueron arrestados y continúan detenidos sin juicio por las autoridades indonesias.

El 1 de diciembre, cuando los papuanos occidentales se preparaban para celebrar el aniversario de la Declaración de Independencia de Papua Occidental en 1961, la policía instrumentó una prohibición de izar la Bandera de la Estrella de la Mañana, en lo que se describió como una acción calculada para aumentar las tensiones. Dos policías y un funcionario público fueron muertos cuando simpatizantes de la independencia atacaron una estación de policía en respuesta a la brutalidad indonesia durante el arresto de activistas proindependentistas. Casi cien personas fueron detenidas durante los días siguientes al ataque y tres estudiantes resultaron muertos en custodia. Al menos diez simpatizantes de la independencia fueron muertos en Merauke.

Cientos de papuanos occidentales han cruzado la frontera a Papua Nueva Guinea en busca de seguridad y se encuentran en centros de cuidados de la iglesia, además de en los existentes campamentos de refugiados. Las personas que cruzaron recientemente la frontera no han sido reconocidas como refugiados y han sido tratadas brutalmente por las fuerzas de seguridad de Papua Nueva Guinea. Los dirigentes fueron arrestados y están esperando juicio en Papua Nueva Guinea.

BOUGAINVILLE

Se dio un importante paso adelante cuando se acordó y concretó un referéndum sobre la independencia de Bougainville en enero del año 2001 entre dirigentes de Bougainville y el gobierno de Papua Nueva Guinea (PNG), después de más de diez rondas de negociaciones celebradas durante todo el año 2000.

La guerra por la independencia de Bougainville, entre 1989 y 1998, tuvo como consecuencia más de 12.000 muertes, en los enfrentamientos entre el Gobierno de Papua Nueva Guinea y las fuerzas rebeldes bajo la dirección del Ejército Revolucionario de Bougainville (BRA) y el Gobierno Interino de Bougainville (BIG). Como resultado de las repetidas violaciones de mujeres y niñas de Bougainville, utilizadas como arma de guerra por las fuerzas militares de PNG, han nacido cientos de niños.

El Acuerdo Lincoln de 1998 comenzó un proceso de paz, llamando a una retirada gradual de las tropas de la Fuerza de Defensa de Papua Nueva Guinea (PNGDF) de la isla y el desarme del BRA y de las fuerzas de resistencia pro-Papua Nueva Guinea. El pueblo de Bougainville dio la bienvenida al fin del conflicto supervisado por un Grupo de Monitoreo de la Paz constituido por Australia, Nueva Zelanda, Vanuatu y Fiji. Los esfuerzos de reconstrucción están en marcha bajo la supervisión de las fuerzas de paz del Pacífico Sur y las Naciones Unidas.

Sin embargo, no se ha producido la retirada total de las fuerzas militares de PNG de Bougainville, tal como estaba programada en el Acuerdo Lincoln. Como resultado, el BRA y las fuerzas de resistencias no han rendido sus armas, aunque el BRA ha presentado propuestas para un proceso de desarme al Comité Consultivo del Proceso de Paz, el cual fiscaliza las iniciativas de paz en la isla. Por sobre todo, el tema fundamental de la autodeterminación todavía no ha sido resuelto.

En marzo del año 2000, lo que parecía ser un avance en las conversaciones de paz se convirtió luego en otro punto muerto. El Ministro de Relaciones Exteriores de PNG, Sir Michael Somare y los representantes de Bougainville (Joel Banam, del Consejo Leitana de Ancianos, el Gobernador de Bougainville, John Momis y el Presidente Kabui de BPC) firmaron el Entendimiento de Loloata. Este incluye un compromiso del Gobierno de PNG de cambiar la Constitución de PNG para permitir un alto grado de autonomía para Bougainville. Pero el gabinete de PNG reiteró más tarde su oposición a una opción de independencia, lo cual desde entonces ha seguido siendo el punto más álgido.

Hablando sobre las conversaciones de marzo de 2000, el vocero internacional de BPC, Moses Havini, expresó preocupación al decir *"no hay nada en el entendimiento que sujete a PNG a un cronograma fijo o compromiso con respecto a un nivel de autonomía o incluso cuándo la autonomía pudiera ser lograda. Reconocer una 'aspiración' está muy lejos de responder a esas 'aspiraciones'..."*.

En septiembre de 2000, dirigentes de Bougainville y funcionarios de PNG alabaron otro avance en las negociaciones de paz que contemplaba un acuerdo orientado hacia un marco constitucional para un referéndum sobre la independencia. Este referéndum, que debe incluir la opción de independencia para la isla, será celebrado no antes de 10 años y no después de 15 años después de la elección de un gobierno autónomo, esperada para enero

Papua Nueva Guinea, al norte. Foto: Palle Kjærulff Schmidt

Hombre decorado para un ritual tribal sing-sing. *Tierras altas de Papua Nueva Guinea. Foto: Palle Kjærulff Schmidt*

de 2002. También conforme al acuerdo, se requiere que los combatientes de Bougainville entreguen sus armas que han empuñado desde fines de los años 80. Pero el BRA sigue cuestionando por qué el gobierno de PNG no se compromete a hacer lo mismo. Sin embargo, dirigentes conjuntos del equipo negociador enfatizaron que un avance era posible sólo porque ambas partes había estado dispuestas a entrar en compromisos.

El 9 de marzo de 2001, las conversaciones de paz en Port Moresby volvieron a convenir tratar otra vez temas referentes a la autonomía. La reunión discutió áreas de acuerdo así como también aquellas que necesitaban más negociaciones, con la presencia de más de 20 representantes de Bougainville así como también funcionarios gubernamentales y Ejecutivos de las Naciones Unidas. Los temas tratan del tipo de poderes que tendrá el Estado y de los que serán otorgados a Bougainville. Esto formará una base para una constitución que permita a Bougainville operar un gobierno autónomo. No obstante, todavía deben tratarse temas críticos como la revisión de tribunales y de la justicia, poderes de recaudación de ingresos, derechos humanos, ayuda externa, relaciones intergubernamentales, administración pública y responsabilidad fiscal. Además, las mujeres de Bougainville que fueron violadas y usadas como armas de guerra en el conflicto de 10 años de duración continúan expresando su frustración por la falta de justicia al tratar las violaciones cometidas contra ellas.

La cuestión ahora radica en saber exactamente sobre qué áreas fundamentales el pueblo de Bougainville tendrá plena autonomía.

LAS ISLAS SALOMÓN

Desde 1998, las Islas Salomón han experimentado una crisis que ha amenazado su misma existencia como nación. La causa principal de esta crisis ha sido descrita en algunos ámbitos como diferencias étnicas entre los pueblos de Guadalcanal y Malaita.

Las causas fundamentales de esta crisis van mucho más allá de esto y pueden encontrarse en las malas políticas de sucesivos gobiernos, estructuras y sistemas de gobierno débiles e ineficientes, mala planificación del desarrollo de recursos a gran escala, la desigual distribución de los beneficios del desarrollo y la necesidad de un cambio institucional y constitucional. La explicación étnica, por sí sola, es demasiado simplista y carece de la capacidad para explicar las causas del conflicto y contribuir a su resolución.

Los temas socioeconómicos y políticos

En el momento de su independencia, el 7 de julio de 1978, los isleños de Salomón se enfrentaron con la enorme tarea de forjar un sentimiento nacional a partir de sociedades diversas; la población de Salomón hablaba más de 87 lenguas. Aparte de los temas de nacionalismo, la economía era dependiente de la explotación de los recursos naturales por parte de compañías extranjeras y el desarrollo infraestructural se concentraba en torno a Honiara, la capital nacional.

La mayor parte de las oportunidades de empleo formal se concentraba también en Honiara, mientras que las Provincias de Isabel, Makira/Ulawa, Temotu y Malaita contenían al 49% de la población del país y sólo el 15% de empleos del sector formal.

La distribución de beneficios provenientes del desarrollo de recursos naturales se convirtió en un tema importante en las décadas posteriores a la independencia. Los recursos naturales estaban siendo agotados rápidamente, pero no para el bienestar de aquellos que los poseían sino para financiar un sistema de gobierno.

El tema de la tierra estaba relacionado con esto. Muchos habitantes de Guadalcanal (predominantemente masculinos) vendieron tierra consuetudinaria en torno a Honiara a personas de otras provincias en las décadas pasadas. Esto se hizo en contra de la sociedad matrilineal de Guadalcanal, en la cual las mujeres son las custodias de la tierra. Además, muchos individuos vendieron tierra sin consultar con otros miembros de su *laen* (tribu). Esto causó frecuentes conflictos entre los grupos terratenientes y entre los mismos y los nuevos "dueños". Las mujeres y la nueva generación de Guadalcanal se han sentido agraviadas por la venta de tierras en el transcurso de los años, pues consideraron el hecho como una venta de su "derecho de nacimiento".

En los años 80 y 90, la economía en deterioro del país soportó a un gobierno acumulando deudas muy superiores a su capacidad de devolverlas. Esto se debió parcialmente a prácticas erróneas de administración, como gastos descontrolados y falta de recaudación de impuestos. El período también fue testigo de fraudes importantes por parte de funcionarios públicos además de otorgarse enormes cantidades de dinero a miembros del parlamento a través del Fondo de Desarrollo Electoral (CDF). Consiguientemente, la mayoría de la población sufría y unos pocos se enriquecieron mucho a expensas de un desarrollo nacional.

Desde la independencia ha habido preocupación por el hecho de que el sistema provincial de gobierno era caro e inefectivo. En el informe del Comité de Revisión Constitucional de 1987 (CRC), una de las recomendaciones más importantes fue el establecimiento de un sistema federal de gobierno. Sin embargo, eso fue ignorado por los sucesivos gobiernos.

Otro tema planteado por el informe del CRC de 1987 fue el relativo a la libertad de movimiento y asentamiento. Aunque la Constitución de las Islas Salomón garantiza a toda persona la *"libertad de movimiento ... [lo cual] ... significa el derecho a moverse libremente en todas las Islas Salomón, el derecho a residir en cualquier parte de las Islas Salomón..."* el informe del CRC destacó la necesidad de controlar el movimiento y asentamiento de personas. Los temas de migración y asentamiento son complejos en Guadalcanal debido al rápido crecimiento de Honiara y a la expansión de asentamientos ilegales en áreas en torno a la misma.

Otro fenómeno de los 90 que explica en gran parte la crisis de Guadalcanal fue la inmigración de Bougainville. Más de 9.000 habitantes de Bougainville huyeron a las Islas Salomón y una vasta mayoría se asentó en Guadalcanal durante largos períodos de tiempo influyendo definitivamente a los isleños de las Islas Salomón.

Pero lo más destacable de los años 90 fueron las elecciones nacionales de 1997. Por primera vez en la historia electoral del país, los votantes expulsaron a más de la mitad de los parlamentarios en funciones. Los resultados electorales enviaron un fuerte mensaje a los políticos de que el pueblo ya no estaba dispuesto a aceptar los "negocios de siempre". Exigía un cambio y rápido.

La crisis actual

Desde comienzos de 1998 a fines de 1999, las tensiones entre los habitantes de Guadalcanal y los colonos de Malaita escalaron hasta un punto en que al menos 50 personas resultaron muertas y más de 20.000 personas (en su mayoría de Malaita) fueron expulsadas de poblados en Guadalcanal, especialmente de áreas en torno a Honiara.

Durante todo 1999 hubo también continuos enfrentamientos entre la Policía Real de las Islas Salomón y los militantes de Guadalcanal, el Movimiento Isatabu por la Libertad (IFM). Hacia abril del año 2000 unos trece miembros del IFM habían sido muertos por la policía. El movimiento atrajo rápidamente a simpatizantes de toda la isla.

A comienzos del año 2000 se formó un grupo que alegaba representar a desplazados de Malaita y se denominó la Fuerza Águila Malaita (MEF). Los intereses de este grupo se centraban en torno a demandas de compensación por propiedades dañadas y destruidas por el IFM, las matanzas de personas de Malaita y la protección de los intereses de Malaita en Honiara.

La búsqueda de la paz

Desde comienzos de 1999 se han realizado una serie de intentos para poner un fin a la crisis. Este proceso implica intentos de encarar los temas subyacentes de la crisis y tratar las demandas de las diversas partes.

Estos intentos de solución han incluido una fiesta ceremonial *kastom* (costumbre) y cinco "conversaciones de paz" que han tenido como resultado la firma de varios documentos: el Acuerdo de Paz de Honiara (28 de junio de 1999), el Acuerdo Panatina (12 de agosto de 1999), la Conferencia de Paz de Buala (4-5 de mayo, 2000), las Conversaciones de Paz de Auki (9-10 de mayo, 2000), la Conferencia Nacional de Paz de las Islas Salomón (25-27 de agosto, 2000) y el Acuerdo de Paz de Townsville (9-15 de octubre, 2000).

Para un resultado positivo de las conversaciones, todas las partes involucradas en la crisis deben estar representadas y se deben encarar los temas socioeconómicos y políticos subyacentes. Además, existe la necesidad de mirar más allá de la etnicidad. Debemos explorar el tema socioeconómico y político subyacente a los temas planteados por los diversos actores de la crisis. De alguna forma, hay legitimidad en mucho de los temas planteados por las personas de Malaita, Guadalcanal y otros que están involucrados. La etnicidad es meramente la vía por la cual se manifiesta la frustración de la gente.

KANAKY (NUEVA CALEDONIA)

El Gobierno de Nueva Caledonia ha estado trabajando por la implementación del contenido del Acuerdo de Noumea, firmado en mayo de 1998 entre la coalición proindependencia FLNKS (Front de Libération Nationale Kanak et Socialiste), la mayoría antiindependencia RPCR (Rassemblement Pour la Calédonie dans la République) y el gobierno francés.

Aunque todas las partes del Acuerdo reafirmaron el principio de volver a equilibrar la economía del país y promover una mayor participación del pueblo indígena *kanak* en la economía local, este Acuerdo ya ha sido criticado tanto por las partes integrantes como por las no integrantes. El gobierno francés fue criticado por los dos partidos más importantes del Acuerdo por no jugar su papel como árbitro en su implementación.

En una declaración al Comité Especial de las Naciones Unidas sobre Descolonización durante el Seminario Regional del Pacífico 2000, en Majuro (Islas Marshall), el representante del FLNKS planteó su preocupación sobre la voluntad real del nuevo gobierno caledoniano de compartir el poder, destacando la omisión de parte de la mayoría del RPCR de dar información vital a la oposición. El FLNKS cuestionó, además, la autenticidad del compromiso del gobierno francés para garantizar la implementación de un genuino procêso de descolonización para los indígenas kanak.

El Pacto Social

En adición a las dificultades para operar las recién establecidas instituciones políticas, Kanaky/Nueva Caledonia también ha sido desestabilizada por eventos significativos que reflejan la disparidad social entre las diferentes comunidades.

Numerosas huelgas de trabajadores y tomas de fábricas alteraron la frágil economía del país durante los preparativos de la firma del "Pacto Social" por el gobierno local y las organizaciones patronales el 20 de octubre de 2000. El pacto fue firmado después de un extenso debate público que comenzó con su publicación en agosto. Pero algunos sindicatos se negaron a firmar el acuerdo de 20 páginas; Union Syndicale des Travailleurs Kanak et Exploités (USTKE) lo describió como decepcionante.

Sin embargo, otras partes lo consideraron como un factor estabilizador después de muchos meses de huelgas e inquietud industrial. Establece procedimientos para la resolución de conflictos y un diálogo "preventivo" obligatorio cuando existan amenazas de acciones huelguísticas, así como requiere una notificación previa de cinco días antes de una huelga.

Una previsión clave fue que el sueldo mínimo del país aumentaría a CFP Fr. 100.000 por mes en el plazo de dos años. No obstante, en noviembre se lanzó un renovado ataque contra el pacto por parte de un grupo de sindicatos encabezados por las minas Soenc. Clausuraron la mina de níquel en Kouaoua, desorganizaron otras y organizaron una huelga general sumamente exitosa el 16 de noviembre. A la mañana siguiente, los sindicalistas establecieron bloqueos en los caminos principales de Noumea, embotellaron la intersección de las carreteras más transitadas de la isla principal y arrojaron adoquines a las fuerzas de seguridad.

Sin embargo, por la tarde los problemas habían finalizado y los militantes habían obtenido un nuevo acuerdo salarial. El 28 de diciembre, el gobierno aprobó la legislación de los nuevos sueldos.

En el frente político

El panorama político ha cambiado como resultado de la inesperada coalición entre fuerzas anti-independencia y partidos moderados pro-independencia dentro del nuevo gobierno. Además de tan inesperada coalición, Union Calédonienne (UC), el mayor partido dentro del FLNKS se enfrentó a serias divisiones en sus filas.

En abril, siete miembros del congreso de Nueva Caledonia, identificados como FLNKS, retornaron a su identidad UC, diciendo que la decisión no afectaba la posición de la UC dentro del FLNKS pero que daría al partido una voz y un papel identificables dentro del congreso. El grupo divergente dice que reafirma el objetivo de la UC y del FLNKS de conducir al país a la independencia.

TE AO MAOHI (POLINESIA FRANCESA)

En Polinesia Francesa, el debate sobre las esperadas enmiendas de la Constitución francesa para permitir al país una mayor autonomía y autogobierno está todavía en la agenda de los partidos políticos. Como en Kanaky / Nueva Caledonia, el compromiso del gobierno francés con respecto a la emancipación de los indígenas *maohi* en Te Ao Maohi sigue siendo cuestionable.

Aunque Francia ha suspendido las pruebas nucleares en los atolones de Moruroa y Fangataufa desde 1995, el legado del colonialismo núclear francés en Polinesia todavía está muy vivo en la mente del pueblo maohi. Una creciente campaña por la apertura de los archivos militares relacionados con la época nuclear está atrayendo un apoyo creciente dentro de la región y fuera de la misma.

Iniciado por Organizaciones No-Gubernamentales (ONGs) locales y grupos de la iglesia, el llamado a la transparencia sobre la prueba de artefactos nucleares en Polinesia Francesa tiene también su eco en parlamentarios en Francia y organizaciones internacionales en Europa y en todo el mundo. La petición de abrir los archivos está basada en testimonios oculares de ex trabajadores de los sitios de prueba, publicados en "Moruroa & Us" (1997), como resultado de una investigación sociológica realizada por ONGs locales y la Iglesia Evangélica de Polinesia Francesa con apoyo de otras organizaciones europeas. Pero el Ministro de Defensa manipuló las conclusiones de un estudio epidemiológico incompleto realizado en 1998 por INSERM para desacreditar el testimonio de las víctimas de las pruebas nucleares, y así exoneró a la Junta del "Centre d'Expérimentation Nucléaire" (Centro de Pruebas Nucleares), de toda responsabilidad en los serios problemas de salud actuales en Polinesia Francesa.

En enero de 2000, contestando a Emile Vernaudon – un Miembro del Parlamento de Polinesia Francesa que aboga por la apertura de los archivos - el Ministro de Defensa Alain Richard declaró que Francia no levantaría el sello del "Código de Defensa" sobre las 193 pruebas nucleares realizadas en los atolones de Moruroa y Fantagaufa entre julio de 1966 y enero de 1996. Pero documentos no sellados por el "Código de Defensa" revelan que las pruebas no fueron conducidas en condiciones de seguridad para el pueblo de Polinesia Francesa y su medio ambiente.

El gobierno de Jospin aprobó recientemente una solicitud de la Comisión Parlamentaria de Investigación de las masacres de Ruanda. A la luz de tal precedente, la apertura de archivos militares puede, sin duda, ser extendida a la cuestión de las pruebas nucleares en Polinesia Francesa.

En el año 2000 fue establecido el *Comité de Suivi Moruroa e Tatou* (Comité de Seguimiento "Moruroa & Us") como una organización independiente que opera con el apoyo formal de la Iglesia Evangélica de Polinesia Francesa. Los miembros del Comité tienen sus raíces en organizaciones civiles de Polinesia. El Comité está jugando ahora un importante papel entre los trabajadores de los ex centros de pruebas, quienes quieren establecer un comité reconocido para plantear sus intereses. Durante el año, el Comité asistió a reuniones en Europa e hizo trabajo de "lobby" con parlamentarios franceses para que apoyaran su llamado por una apertura de los archivos sobre pruebas nucleares.

La campaña ha ganado apoyo en el extranjero y se está haciendo trabajo de red con ex veteranos de pruebas nucleares como en Fiji y en Nueva Zelanda. El Comité inició también un diálogo con el Ministerio de Defensa sobre el llamado a la apertura de los archivos y ha lanzado una campaña de tarjetas postales para apoyar su trabajo de "lobby". La traducción a *reo' maohi* del testimonio de ex trabajadores de los centros de prueba publicados en "Moruroa & Us" es una importante actividad del Comité.

TOKELAU

El pequeño grupo isleño de Tokelau tiene una población de aproximadamente 4.000 personas, 1.400 ubicadas en Tokelau; el área territorial total es de 12 kilómetros cuadrados, dividida en tres atolones. Los restantes 2.600 habitantes residen principalmente en Nueva Zelanda, Samoa y Hawaii.

Tokelau es uno de los diecisiete países que están en la lista de territorios no-autónomos del Comité Especial de la ONU sobre Descolonización y está trabajando en aras del autogobierno y la independencia. En los años recientes, ha habido un proceso para devolver poderes de Nueva Zelanda al pueblo de Tokelau.

La aldea es el fundamento de autoridad en la conformación de la nación tokelauana. El Consejo Aldeano de Ancianos es la autoridad central de gobierno, y no alguna distante administración colonial ubicada en Apia (Western Samoa), o Wellington (NZ). La Casa Moderna de Tokelau es la iniciativa que llevará a Tokelau a aproximar mucho más el ejercicio de sus derechos a un acto de autodeterminación.

El fuerte deseo de la dirección de Tokelau (tanto tradicional como moderna) es que el Comité Especial de la ONU sobre Descolonización continúe teniendo una presencia más allá del año 2000.

Tokelau busca seguir discutiendo con su poder administrador un Plan Integral, que delinee los más importantes componentes de desarrollo a ser logrados y establecidos antes de que se considere un cronograma específico para la autodeterminación. La necesidad de una supervivencia económica futura es uno de los intereses más importantes de Tokelau en este momento. El acceso a importantes recursos financieros para desarrollar la pesca como el principal recurso natural y cumplir con otras prioridades como paredes marinas se ha mostrado difícil y lo mismo para acceder a fondos de la comunidad internacional para el desarrollo infraestructural. Siendo un territorio con recursos naturales extremadamente limitados, la cuestión de la autodeterminación es difícil cuando se tiene que depender de recursos magros. Si Tokelau se autodetermina mañana, no tendrá los medios económicos para sobrevivir.

Sin embargo, Tokelau está tratando de reclamar tierra que extendería su Zona Económica Exclusiva y preservaría su cultura y economía. La devolución de la Isla Swains (Tokehega), que fue otorgada a Samoa Americana en un acuerdo entre Nueva Zelanda y los Estados Unidos es de interés crucial para Tokelau, que ha citado documentos externos que sustentan su demanda. Este es un tema muy doloroso para Tokelau. También es un tema que podría aliviar las presiones y la necesidad de tierra fértil para cultivar alimentos, la producción de copra así como también de recursos marinos incalculables.

Los *tokelauanos* se consideran un pueblo único que trata de sobrevivir. Son débiles y necesitan del apoyo de la comunidad internacional – tanto material como moral.

FIJI

Antecedentes del golpe de estado del 19 de mayo del año 2000

El renacimiento del Movimiento Taukei (TM) en Fiji, en abril del año 2000, fue el heraldo de los disturbios políticos que Fiji continúa enfrentando hasta la fecha. El TM es un movimiento indígena nacionalista que fue protagonista de los procesos políticos y acciones que condujeron a los golpes de 1987. Fue revivido con la promesa pública de uno de sus líderes, el veterano político Apisai Tora, de que el gobierno de la Coalición Popular de Mahendra Chaudry, liderado por el partido laborista, sería derrocado. Tora dijo que las acciones de Chaudry y sus declaraciones desde su asunción al poder en mayo de 1999 habían sido ofensivas para las instituciones fijianas y que Chaudry estaba literalmente invitando a un golpe de estado. Dijo que el objetivo de TM era también cambiar la Constitución de 1997 para asegurar la supremacía política fijiana. Las Fuerzas Militares de Fiji emitieron inmediatamente una declaración diciendo que no formarían parte de ningún intento de derrocar al gobierno.

La primera marcha de TM contra el gobierno de Chaudry se realizó el 20 de abril en Lautoka (la segunda ciudad de Fiji) con una asistencia de 300 personas. Una semana más tarde, hubo una asistencia mayor y se realizó una marcha de protesta de unos 500 simpatizantes a través de Suva.

El principal partido opositor Soqosoqo Vakavulewa ni Taukei (SVT), antes conducido por un líder golpista y ex Primer Ministro Sitiveni Rabuka, pero ahora encabezado por uno de los fundadores del TM en 1987, Ratu Inoke Kubuabola, apoyó decididamente el renacimiento del TM y las actividades planificadas. El gobierno de Chaudry sostuvo que SVT estaba endosando una política nacionalista extremista si el TM recuperaba su antiguo estatus político. Dijo que tales políticas raciales extremas no tienen lugar en la sociedad multiracial y multicultural de Fiji.

Del 28 al 29 de abril, el Bose Levu Vakaturaga o Gran Consejo de Jefes (BLV/GCC) se reunió para discutir el futuro de la Ley de Propietarios y Arrendatarios Agrícolas (ALTA) que regula los arriendos de los arrendatarios, en su mayoría indios, de tierras de posesión indígena. Se considera que un acuerdo amigable sobre ALTA es crucial para la estabilidad económica y política de Fiji, pues afecta directamente la vital industria de la caña de azúcar. La mayoría de los consejos provinciales fijianos han exigido la derogación de ALTA y su reemplazo por la Ley Administrativa de Tierra Nativa (NLTA). El gobierno de Chaudry declaró en respuesta que deseaba mantener a ALTA, lo cual enfureció a muchos jefes y terratenientes fijianos.

El Partido de Oposición SVT y la Junta de NLTA (NLTB) también atacaron el pago al contado de $ 28.000 hecho por el gobierno de Chaudry a los agricultores cañeros cuyos arrendamientos de tierra no habían sido renovados, mientras que los propietarios recibieron $ 10.000 en concepto de asistencia para la rehabilitación de la tierra. El gobierno de Chaudry explicó que $ 28.000 es el costo de reasentar a un agricultor arrendatario y es un pago para el resto de sus vidas. Los $ 10.000 para los propietarios es una forma de acción afirmativa y está designada a ayudar a cultivar su propia tierra.

Luego está el tema del acuerdo que estaba siendo negociado por el gobierno sobre la cosecha y comercialización de las ricas plantaciones de caoba de Fiji. Aunque no se firmó ningún acuerdo, el gobierno fue atacado por la forma en que condujo las negociaciones. El gobierno de los EE.UU. acusó al gobierno de Fiji de defraudarlo, un consorcio americano dice que va a acusar al gobierno ante la justicia por difamación, y el NLTB y los propietarios acusaron conjuntamente al gobierno por falta de consulta.

Toma de poder por las armas

Con este telón de fondo, el 19 de mayo de 2000, siete hombres armados liderados por el fállido empresario George Speight atacaron el Parlamento mientras que estaba en sesión y tomaron al Primer Ministro Mahendra Chaudry, a su Gabinete y a los miembros parlamentarios como rehenes. El intento de golpe sucedió exactamente un año después de que el Gobierno de Coalición Popular liderado por el partido Laborista asumió el poder.

El golpe armado coincidió con una marcha de unos 5.000 simpatizantes del Partido Nacionalista y el TM a través de las calles de Suva. Los miembros de la banda golpista fueron luego identificados como soldados de élite del First Meridian Squadron, la Unidad de Guerra Contrarrevolucionaria del ejército establecida después de los golpes de 1987.

Los participantes de la marcha no eran conscientes del golpe de estado armado. Cuando fueron informados del mismo, los marchantes se dirigieron inmediatamente al Parlamento. A medida que las noticias del golpe armado se difundían en Suva, los negocios comenzaron a cerrar y la gente a irse a sus casas. Se cree que grupos de criminales comenzaron a romper vidrieras y a saquear. Como la policía seguía sin intervenir, muchos observadores se unieron al saqueo y tomaron artículos a voluntad. Suva se tornó rápidamente en una escena de saqueo total. La gente que retornaba del trabajo y los escolares pronto se vieron involucrados y los supermercados y tiendas fueron completamente vaciados, se rompieron las vidrieras y comenzó el incendio de edificios. La policía, impotente, sólo podía mirar. Los bomberos trataron de impedir que el fuego se extendiera. El saqueo continuó durante casi tres horas antes de que la policía se organizara, se reagrupara y comenzara a frenar el desastre y arrestar a los saqueadores. La policía informó que 16 negocios fueron incendiados y más de 160 fueron saqueados en la vecindad de Suva, con daños estimados entre F$ 30 y 60 millones.

Disputa entre el Gobierno Civil Taukei de Speight y Ratu Sir Kamisese Mara

En su primer conferencia de prensa, Speight declaró que había abrogado la Constitución de 1997 y se autoproclamó jefe de estado "por la voluntad del pueblo de Fiji". Dijo que actuaba en nombre de todos los indígenas de Fiji y que estos lo apoyaban en un cien por cien.

El sábado 20 de mayo de 2000, los instigadores civiles del golpe, parcialmente apoyados por el ejército, nombraron a Ratu Jope Seniloli como Presidente del autoproclamado "Gobierno Civil Taukei". Speight juró como Primer Ministro interino y su Gabinete fue compuesto por otras 13 personas del Partido SVT, del Partido de Alianza de Fiji y del Partido Nacionalista.

El entonces Presidente Ratu Sir Kamisese Mara impuso un estado de emergencia. Inmediatamente el ejército, la policía y el servicio civil se le unieron. El BLV / GCC fue convocado unos pocos días después y junto con el ejército, comenzaron inmediatamente negociaciones con Speight para la liberación de los parlamentarios.

Speight insistió que la Constitución de 1997 tenía que ser abolida y que el Presidente y el Primer Ministro tendrían que ser removidos. La reunión del BLV / GCC del 23 al 25 de mayo de 2000 dio su pleno apoyo a Ratu Sir Kamisese como Presidente y sus bendiciones por su nombramiento de una administración interina. Speight rechazó la resolución de diez puntos del BLV / GCC para resolver el atolladero político.

Ratu Sir Kamisese Mara, citando la Sección 106 (1) de la Ley Constitucional (Enmienda) de 1997 prorrogó el Parlamento y luego nombró a Ratu Tevita Moemoedonu, miembro del Gabinete del Sr. Chaudry, como Primer Ministro interino. Rt. Tevita Moemoedonu era uno de los pocos parlamentarios que no estaban presentes en la Cámara de Representantes el día del golpe. Tanto Speight como el Partido Laborista denunciaron este juego.

Gobierno militar y negociaciones con Speight

En un intento de encontrar una rápida solución al atolladero político, Ratu Sir Kamisese Mara, después de que un grupo de altos oficiales militares se dirigiera a él y luego de una corta ceremonia tradicional fijiana, fue "puesto de lado" como Presidente para permitir al ejército tomar pleno control de los asuntos del país. Las Fuerzas Militares de Fiji alegaron que hicieron esto en un intento de mantener la seguridad en el país. El 29 de mayo, el Comodoro Ratu Voreqe Bainimarama declaró la ley marcial y el ejército emitió más tarde un decreto abrogando la Ley Constitucional (Enmienda) de 1997 y un segundo decreto permitiendo la vigencia de todas las leyes a menos que fueran modificadas (Decretos Nº 1 y 2).

A pesar de las mencionadas acciones del ejército, Speight continuó sumando demandas. El Comodoro reafirmó el otorgamiento de amnistía a Speight y a los siete hombres que atacaron el Parlamento pero la amnistía no incluía inmunidad por las actividades criminales ni el asesinato de un oficial de policía.

En medio de todo esto, la crisis económica comenzó a escalar con el despido de mil trabajadores de la industria textil, más profesionales que emigraban del país, la industria turística sufriendo una disminución del 60% en las reservas y prohibiciones comerciales impuestas por el Consejo Australiano de Sindicatos y el Consejo de Sindicatos de las Islas Salomón. Las escuelas de las islas principales Vanua, Levu y Viti Levu y la Universidad del Pacífico Sur fueron clausuradas prontamente, se suspendió un viaje a Nueva Zelanda del equipo de rugby de Fiji Sub 21 como consecuencia de la negativa del gobierno de Nueva Zelanda de otorgarles visa, la comisión de servicio público anunció que había decidido un recorte del 20% de los pagos y un par de gobiernos extranjeros retiraron a sus estudiantes temiendo por su seguridad. El 7 de junio de 2000, Fiji fue suspendido de la Mancomunidad Británica.

Gobierno con el apoyo de las Fuerzas Militares de Fiji

El ejército anunció una administración civil interina de 17 miembros encabezada por Laiseinia Qarase, con Ratu Epeli Nailatikau como Primer Ministro Adjunto y Ministro de Relaciones Exteriores mientras que las negociaciones sobre la liberación de los parlamentarios todavía proseguían.

El 18 de julio de 2000 (cinco días después de la liberación de todos los parlamentarios restantes por Speight), Ratu Josefa Iloilo, a continuación del apoyo del BLV / GCC juró como Nuevo Jefe de Estado interino y Presidente ante los militares. Pocos días más tarde, se nombró un segundo gobierno civil interino encabezado por Laiseinia Qarase. La segunda administración interina fue constituida por 24 fijianos, un *rotuman*, un indio y dos personas en parte europeas. Había cinco mujeres en la nueva alineación, una detentando una importante posición ministerial y las cuatro restantes detentando posiciones de asistentes ministeriales.

Uno de los primeros puntos económicos tratados por la segunda Administración Interina fue buscar la aprobación de BLV / GCC de un plan de desarrollo de diez años para los fijianos y rotumanos y la revisión de la Ley Constitucional (Enmienda) de 1997. El BLV / GCC aprobó la formulación de un proyecto de acciones.

Este tiene como objetivo mejorar los intereses fijianos y rotumanos y toca temas como la agricultura, educación, negocios, propiedad de la tierra y arrendamientos. Se declaró que el objetivo de la Administración Interina era promulgar una constitución revisada en 2001 y celebrar elecciones generales no antes de un año después de eso. En esta presentación, Qarase anunció que la nueva constitución tendría tres objetivos principales:

a) Encarar los intereses y aspiraciones de los fijianos y asegurar la supremacía de sus intereses derivados del Acta de Cesión de 1874;
b) Proveer un marco de buen gobierno en Fiji, incluyendo derechos igualitarios y libertad para todos los ciudadanos y grupos, el imperio de la ley y la independencia judicial y un Parlamento representativo de todas las comunidades de Fiji; y
c) Establecer una constitución que brinde el marco legal para que las comunidades de Fiji trabajen conjuntamente, promuevan la unidad nacional.

El proyecto había sido descrito por ciertos grupos dentro de la comunidad como racista, pero Qarase hizo un llamado a sus críticos para que comprendieran los intereses indígenas y aseguró a otras razas que también serían complacidas. Los críticos de la planificada revisión constitucional también habían argumentado que esto sólo podía ser decidido por un grupo de representantes electos.

Las continuas acciones ilegales, después de la liberación de los rehenes, especialmente la toma del pueblo Korovouo (de donde proviene Speight), los incidentes de violencia y saqueo de propiedad sufridos por las comunidades rurales indias, la detención de 400 indios en Labasa y varios bloqueos de caminos, culminaron con la detención de George Speight y tres de sus más próximos colaboradores por el ejército el 26 de julio. El día siguiente, durante una emboscada militar temprano en la mañana, 369 simpatizantes civiles de Speight fueron arrestados y detenidos en la Estación de Policía de Nasinu. La corte negó fianza a Speight y otros doce y fueron acusados conjuntamente de: asociación con personas portadoras de armas de fuego y municiones, entierro ilegal en el complejo parlamentario, asamblea ilegal en el Parlamento y asamblea ilegal en la Escuela Primaria Fijiana Kalabu para premeditadamente causar inestabilidad en el país. Siguen prisioneros en la Isla Nukulau (fuera de la costa de Suva).

Camino hacia la Ley Constitucional

En septiembre de 2000, el Primer Ministro Interino Qarase dijo a la Asamblea General de la ONU que restauraría el régimen democrático en el plazo de dos años. Estableció una Comisión de Revisión de la Constitución con la tarea de revisar la Constitución de 1997.

El 2 de noviembre, miembros armados contrarrevolucionarios comenzaron un furioso ataque, disparando al azar contra el Cuartel General Militar de Fiji en Nabua. A esto siguió un violento intercambio de disparos, con el resultado de ocho soldados muertos (tres leales al Comodoro Bainimarama y cinco de los amotinados) y 26 heridos. Los detalles del motín sorprendieron a la nación, especialmente a los indígenas fijianos que tenían al ejército en alta consideración y que tenían una creencia de larga data de que el ejército (predominantemente compuesto de indígenas fijianos) tenía como misión proteger los intereses indígenas y nunca se volcaría contra su propio pueblo.

El 15 de noviembre, un Juez de la Suprema Corte, Anthony Gates, sentenció que la Ley Constitucional (Enmienda) de 1997 sigue siendo la ley suprema del país después de que un agricultor, el Sr. Chandrika Prasad, acudió a las Cortes en busca de justicia. Prasad y su familia habían sido atacados por indígenas fijianos en su granja, sus animales fueron sacrificados y su propiedad fue incendiada. El Juez Gates también sentenció que el ex Presidente (Ratu Sir Kamisese Mara) todavía era el Presidente y que el Parlamento debería ser vuelto a convocar para el nombramiento de un nuevo Primer Ministro. La Administración Interina presentó inmediatamente una apelación de esta decisión a la Corte de Apelaciones.

El Juez Sir Maurice Casey, quien encabezó la Corte de Apelaciones, sentenció que la sentencia de Gates "no tiene ningún efecto coercitivo" y acordó que debía permitirse que el gobierno interino presentara la evidencia que no pudo presentar ante el Juez Anthony Gates. El 1 de marzo de 2000, en su sentencia que constituyó un hito, el Juez Sir Maurice Casey, declaró en la sentencia de corte que:

a) La Constitución de 1997 todavía era la ley suprema del país y no había sido derogada.
b) El Parlamento no había sido disuelto sino prorrogado el 27 de mayo de 2000.
c) El cargo de Presidente quedó vacante el 15 de diciembre de 2000 cuando Ratu Sir Kamisese Mara renunció. De acuerdo con la Sección 88 de la Ley Constitucional (Enmienda) de 1997, el Vicepresidente puede cumplir las funciones del Presidente hasta el 15 de marzo de 2001..
d) El estado debe pagar $ 50.000 para cubrir los costos incurridos por el equipo legal del Sr. Prasad.

Inmediatamente después de la sentencia, Ratu Iloilo se autodenominó "Presidente Actuante" para mostrar su cumplimiento de la decisión. Fue apoyado por el BLV/GCC para continuar como Presidente con Ratu Jope Seniloli como Vicepresidente. Qarase renunció en primera instancia, pero fue finalmente vuelto a nombrar por tercera vez como Primer Ministro interino. El Sr. Qarase no ha realizado cambios importantes en la composición del Gabinete de la segunda administración interina (28 miembros) pero informó en una entrevista que propondrá integrantes adicionales indo-fijianos.

Desafío futuro

La crisis política no es un simple choque entre indofijianos y fijianos. Hay un conflicto dentro de las comunidades así como también entre ellas. La evidencia ha demostrado que las opiniones de los indígenas fijianos están polarizadas. Están aquellos que ven la situación como una situación en que los indígenas fijianos emplean la fuerza y la violencia para afirmar sus derechos. Están aquellos que ven la situación como una en que ciertos políticos y partidos políticos usan sentimientos racistas y nacionalistas para volver a retomar el poder después de haber sido derrotados en las elecciones generales de mayo de 1999 por Chaudry y su Coalición gubernamental multiracial. También está la sutil pero prominente presencia del provincialismo, entre el Este, Oeste y Norte de Fiji y entre las tres alianzas de Burebasaga, Kubuna y Tovata. Y hay desacuerdos y crisis en el seno de la dirección política fijiana y también entre los jefes que tienen opiniones diferentes. Existe una opinión de que el dominio político fijiano es una necesidad y existe la opinión de que Fiji no puede progresar con racismo o cualquier apariencia de ciudadanos de primera y segunda clase.

Los indofijianos están igualmente divididos, como lo atestiguó la hostilidad en la forma en que muchos consideraron particularmente al gobierno de Chaudry, mayormente apoyado por los laboristas.

Existe también el elemento de la militarización de la sociedad fijiana. Los eventos de 1987 y mayo de 2000 podrían establecer un peligroso precedente en el cual las armas y la violencia se convierten en la forma de moda de resolver las diferencias. "No hay otra forma", la frase que Rabuka usaba para describir el motivo de los golpes de 1987, se está haciendo popular.

El desafío para Fiji, que muchos tenían la esperanza de haber encarado en la Constitución de 1997, internacionalmente aclamada, es cómo equilibrar los derechos y aspiraciones indígenas con los principios democráticos de igualdad de derechos y justicia. Muchos de los problemas que Fiji está enfrentando ahora son resultado del colonialismo, la mala administración de los arrendamientos de tierras nativas y también de los derechos indígenas, el gobierno y la justicia en tiempos modernos. No será fácil encontrar una solución, pero tendrá que encontrarse. La pregunta que se debe plantear Fiji es qué tipo de sociedad aspira tener y cómo lograrla.

TONGA

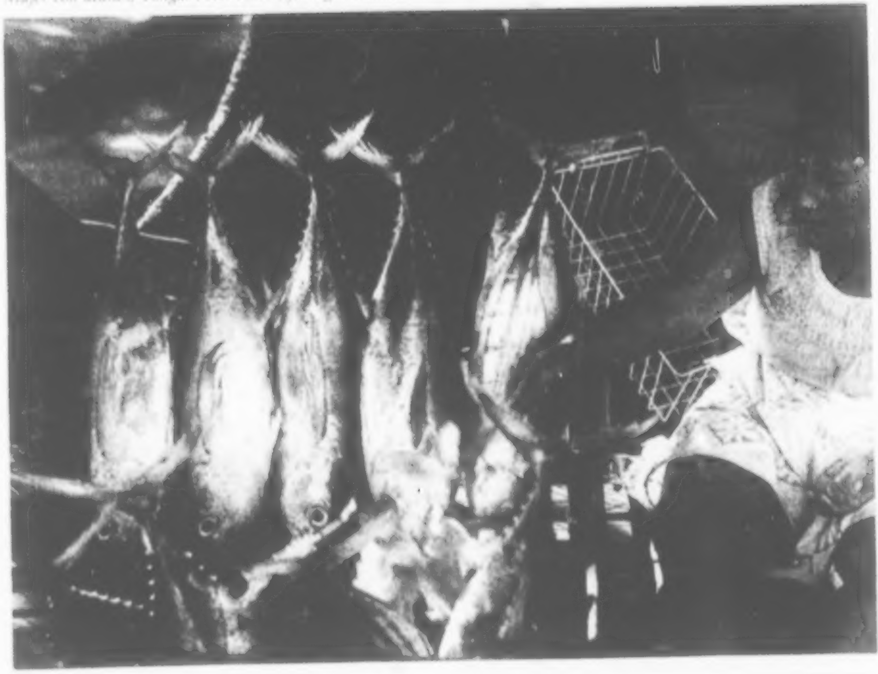
En Tonga, el movimiento por la democracia y el cambio está ganando un creciente apoyo dentro y fuera del reino. Como confirmó Akilisi Pohiva, activista del Movimiento por los Derechos Humanos y la Democracia de Tonga (THRDM), el movimiento continuará presionando al gobierno y la monarquía para impulsar un referéndum para realizar cambios en la Constitución. THDRM continuará impulsando el diálogo y la discusión con el gobierno de Tonga y la monarquía para efectuar los dos importante cambios recomendados.

Cambios recomendados de la Constitución

La primera recomendación llama a un mayor reparto del poder en la administración del reino. Además, se recomienda que todos los 30 miembros del

Niños preparados para la danza. Te Ao Maohi. Polinesia Francesa. Foto: Palle Kjærulff Schmidt

Mujer con atunes, Tonga. Foto: Palle Kjærulff Schmidt



Parlamento sean electos y que el monarca elija sus 12 Ministros del Gabinete entre los 30 miembros electos. Esto es contrario a la actual Constitución que prevé que 9 miembros sean electos por el pueblo, 9 nobles electos por otros nobles y 12 Ministros del Gabinete sean nombrados de por vida por el monarca.

No ha habido ninguna respuesta oficial del gobierno desde 1998 cuando el proyecto de constitución fue presentado al gabinete. El Gobierno de Tonga rechazó otra solicitud del movimiento para que un referéndum nacional coincidiera con las últimas elecciones generales. El movimiento prodemocracia en Tonga también hizo un llamado a los nobles para que compartieran algunos de los beneficios de la tierra con el pueblo. Hasta la fecha, una importante parte de la tierra todavía es administrada por nobles que obtienen el pleno beneficio de los alquileres y arrendamientos de tierras.

Representantes de misiones extranjeras residentes en Tonga, p. ej., Nueva Zelanda, Australia y Gran Bretaña indicaron cambios en su posición y dieron apoyo al Movimiento por los Derechos Humanos y la Democracia de Tonga al no financiar todas las actividades gubernamentales presentadas a ellos.

Protección del medio ambiente y de los recursos

Además de hacer campañas y trabajo de "lobby" en favor de cambios constitucionales, el Movimiento por los Derechos Humanos y la Democracia de Tonga también es activo en temas referentes a la protección del medio ambiente y de los recursos. Luego de un descubrimiento trascendental de cientos de organismos marinos desconocidos en la Fosa de Tonga por científicos de Australia y Francia, el THRDM hizo un llamado al gobierno de Tonga para que reclamara la propiedad de los organismos marinos. Como lo expresó el Sr. Senituli, del THRDM *"es absolutamente esencial que el gobierno presente su demanda de propiedad sobre estos organismos marinos ahora. En realidad, el Gobierno y el pueblo de Tonga deberían tener el derecho a denominar estos nuevos organismos pues se encuentran dentro de las fronteras legales de Tonga"*.

Según la Organización Mundial del Comercio, el Convenio de las Naciones Unidas sobre la Diversidad Biológica (CBD) y el Convenio de la Ley del Mar de las Naciones Unidas, el gobierno de Tonga tiene derechos de propiedad sobre los recursos naturales, incluyendo la flora y la fauna, que se encuentran dentro de su jurisdicción geográfica y legal.

El muestreo de sangre como biopiratería

El Movimiento por los Derechos Humanos y la Democracia de Tonga condenó un acuerdo firmado entre el gobierno de Tonga y una corporación biotecnológica australiana, Autogene, para recolectar muestras de sangre de ciudadanos de Tonga. El acuerdo, firmado sin un amplio debate público, abre el camino para la comercialización y patente del ADN y de material genético.

La biopiratería no es nueva en el Pacífico. En 1992, el Departamento de Comercio de los EE.UU. presentó una solicitud de patente sobre las líneas celulares-T de una mujer de 40 años de edad de una Provincia Occidental y de un hombre de 58 años de Guadalcanal, en las Islas Salomón. Otra vez, en 1993, el Departamento de Salud y Servicios Humanos de los EE.UU. y el Instituto Nacional de Salud presentaron demandas sobre líneas de células-T de 24 personas *hagahai*, en Papua Nueva Guinea.

Más recientemente, se llegó a un acuerdo entre la administración de las Islas Norfolk y la Universidad Griffith de Australia para realizar investigaciones sobre el ADN en la isla.

Inmigrantes asiáticos

El único reino del Pacífico se enfrenta al problema de los inmigrantes asiáticos que desplazan a los habitantes de Tonga de sus actividades económicas y comerciales. Según el Ministro de Trabajo y Comercio, hay 849 puestos de venta al menudeo en Tongatapu, la isla capital, 67 de los cuales son de propiedad de inmigrantes chinos, otros 31 de propiedad de *tonganos* pero que son ahora operados por inmigrantes chinos.

Según el Sr. Senituli, *"la pequeña tienda de venta al menudeo es el vínculo final entre el manufacturero, el importador y el consumidor. Sus dueños constituyen la faz humana de la industria al menudeo, porque ellos ven al consumidor todos los días y conocen y comprenden todos sus problemas familiares, sociales y financieros. Las pequeñas tiendas tonganas no sirven simplemente para comprar y vender mercaderías. Son también salas de espera para aquellos que están necesitados de asistencia social, comunal y financiera. Además de eso, las familias de los propietarios de las pequeñas tiendas al menudeo son usualmente los mayores contribuyentes del 'fonua', la iglesia y las actividades familiares. Como tal, las pequeñas tiendas son un parte integral de nuestro sistema social, económico y cultural. La cuestión es si los dueños asiáticos de las pequeñas tiendas de venta al menudeo pueden cumplir con ese papel"*.

ISLAS MARSHALL

El 1 de marzo marca la celebración anual del Día en Memoria de la Víctima Nuclear en las Islas Marshall. Este año se puso énfasis en materiales previamente secretos y ahora hechos públicos que documentan los efectos de la radiación más allá de los cuatro atolones (Bikini, Enewetak, Rongelap, y Utrik) reconocidos en el Contrato de Libre Asociación. Según documentos del Centro para el Control de Enfermedades de los EE.UU. (CDC), el atolón Ailuk contiene la fuente particular mayor de yodo 131 liberado atmosféricamente en el mundo (MI, 8 de agosto de 1998, 1, 5). Adicionalmente, el Centro para el Control de Enfermedades recomienda que Ailuk, Jemo, Likiep, Wotho, y Wotje reciban compensación por la exposición a residuos de la prueba Bravo de 1954. Estudios como este serán usados para argumentar un caso de "circunstancias cambiadas" en las próximas negociaciones del contrato. La cláusula de circunstancias cambiadas de contrato permite una reevaluación de la compensación si nuevas pruebas muestran que el actual acuerdo es inadecuado.

Pruebas de misiles en Kwajalein

El Centro de Interés sobre Recursos del Pacífico (PCRC) criticó la continuación de las pruebas de misiles en el Atolón de Kwajalein en las Islas Marshall, diciendo que las últimas pruebas fallidas destacan la locura de la nueva carrera armamentista en el espacio.

Cada prueba de misiles antibalísticos en el Atolón de Kwajalein cuesta US$100 millones de dólares. El costo general del sistema de Defensa Nacional Balística será de US$ 60 mil millones, dinero que podría utilizarse con mejores propósitos, declaró el Centro de Interés sobre Recursos del Pacífico (PCRC) en Suva, Islas Fiji.

El 8 de julio, el ejército de los EE.UU. probó su sistema de Defensa Nacional Balística (NMD) en el Pacífico central. Un misil disparado desde la Base Vandenberg de la Fuerza Aérea en California liberó una cabeza nuclear simulada sobre el Océano Pacífico. Otro misil lanzado desde la Isla Meck en el Atolón de Kwajalein intentó disparar –y falló- contra la cabeza nuclear desde el aire. Este Vehículo Mortal Exoatmosférico no logró separarse del cohete propulsor y todo el sistema erró completamente el blanco atacante. Una prueba similar en enero de 2000 también había fallado. Las pruebas de NMD son parte del esfuerzo de los EE.UU. de desarrollar un nuevo tipo de sistema de Guerra de las Estrellas y el gobierno de los EE.UU. pronto tomará una decisión sobre si desplegar o no el sistema de armas.

El gobierno de las Islas Marshall está actualmente solicitando a los Estados Unidos que paguen una compensación extra a los isleños Marshall que fueron irradiados por 67 pruebas nucleares de los EE.UU. en los atolones de Bikini y Enewetak entre 1946 y 1958. ¿Cómo puede el gobierno de los EE.UU. justificar este costoso programa de prueba de misiles cuando se niega a enfrentar su responsabilidad por pruebas nucleares pasadas? El Tribunal de Demandas Nucleares de las Islas Marshall ha prometido compensación a cientos de *marshalleses* afectados por las pruebas nucleares en

Bikini y Enewatak. Pero más de un tercio de aquellos que debían recibir compensación del gobierno de los EE.UU. han muerto antes de que pudiera completarse el pago.

Negociaciones económicas

Si los dirigentes de los Estados Federados de Micronesia y las Islas Marshall estaban anticipando arduas negociaciones económicas con los EE.UU., fueron confirmados en su anticipación a fines del año pasado de que va a ser una batalla cuesta arriba lograr algo cercano al nivel de financiación que los americanos han provisto durante los primeros 15 años del Contrato de Libre Asociación. Las previsiones económicas del Contrato expiran en octubre – con un período de gracia de dos años durante el cual la financiación está garantizada en caso de que, como es posible, las negociaciones no finalicen para fines de 2001.

Los aproximadamente U$ 2,5 mil millones (1.000 millones para las Islas Marshall y 1.500 millones para los Estados Federados de Micronesia) provistos por Washington "condujeron a una pequeña mejora en el desarrollo económico", dijo un detallado informe de la Oficina General Contable (GAO) en septiembre. Es un argumento que la mayoría de los dirigentes isleños disputan, pero el informe GAO está dando municiones a los congresales americanos que quieren reducir radicalmente la financiación de las dos naciones del Pacífico central. Entonces, los representantes Doug Bereuter (R-Nebraska) y Don Young (R-Alaska) en una columna de editorial abierto en el *Marshall Islands Journal* a mediados de diciembre, declararon que aunque parte de la responsabilidad es de los EE.UU., el problema subyacente del actual Contrato de Libre Asociación no es el nivel de financiación provisto: *"no podemos ignorar el fracaso del gobierno de las Islas Marshall en cumplir con su parte del contrato. A pesar de la ayuda masiva, los hospitales y escuelas están en muy malas condiciones y carecen de los suministros básicos"*. Implicaron que el gobierno de un año de antigüedad del Presidente Kessai Note está dando alabanzas fingidas al proceso de reforma y apelaron al gobierno a que tomara acción. Pero funcionarios de los Estados Federados de Micronesia y las Islas Marshall dicen que muchas reformas gubernamentales sobre las cuales los funcionarios de los EE.UU. están planteando interrogantes ya están realizadas. El Embajador en Washington D.C. de las Islas Marshall, Banny deBrum dijo que contrariamente a los alegatos de GAO, la modernización de las Islas Marshall del *"terriblemente inadecuado sistema social y físico de la infraestructura dejada por el Territorio Administrador (EE.UU.) no sólo ha aumentado la calidad de vida en las Islas Marshall sino que también ha provisto el necesario fundamento para el crecimiento del sector privado"*.

El Embajador en Washington de los Estados Federados de Micronesia, Jesse B. Marehalau, objetó las conclusiones de GAO y consideró "perjudicial" para el GAO sugerir que el Congreso de los EE.UU. debería enfocar el nuevo paquete del Contrato *"con la noción de que la ayuda del Contrato ha sido desperdiciada"*. Pero así parece ser exactamente como Bereuter y Young -dos líderes claves de la Cámara cuyos comités controlan el dinero para las islas- están encarando las conversaciones. Una de sus principales recomendaciones del informe GAO es que las previsiones de "plena fe y crédito" de la actual financiación del Contrato -que han garantizado los pagos de los EE.UU. cada año desde 1986- sean eliminadas de cualquier arreglo futuro, para dar a los EE.UU. más influencia para asegurar la responsabilidad de los isleños. El alegato de que no se ha hecho nada con el dinero del Contrato es una crítica que irrita a los dirigentes isleños. El territorio fideicomisario administrado por los EE.UU. era referido jocosamente como el "territorio herrumbrado"[1] por su falta de progreso desarrollista en los años 70. *"Si comparamos el desarrollo actual con el período del territorio bajo administración, es muy diferente"*, dijo Jacklick. *"Tengo esperanzas de que el gobierno de los EE.UU. sepa apreciar esto"*.

El tema de los juegos de azar

Con una votación de 17 a 7, los juegos de azar han sido prohibidos ahora en las islas. Mientras que los dos proyectos de ley presentados por el Senador Ataji Balos (Kwajalein) tenían el apoyo de las iglesias y del Consejo de Iroij (Jefes), el grupo projuegos de azar estaba constituído por tres funcionarios gubernamentales y sus simpatizantes. Las audiencias públicas fueron carentes de debate -ni un solo individuo habló para defender el derecho a los juegos de azar- mientras que persona tras persona hablaron contra los no reglamentados juegos de azar que dejaban a los niños hambrientos. La coalición a favor de juegos de azar en Nitijela centró sus preocupaciones en ingresos de reemplazo para Kwajalein que depende del ingreso de las máquinas tragamonedas como parte del presupuesto del atolón. Sin embargo, en la sala de Nitijela, cuando los proyectos de ley fueron presentados, la investigación reveló que el gobierno nacional no había recibido ningún ingreso por concepto de impuestos a los casinos. En la pausa antes de la votación final, el portavoz Kessai Note anunció que al Presidente Kabua, al Senador Tony deBrum y al Ministro Phillip Muller no se les permitiría votar debido a sus conflictos de intereses como dueños de casinos. A otros con conflictos similares se les aconsejó abstenerse de votar o serían multados si surgían pruebas más tardes. Otros dos miembros adicionales se abstuvieron de votar.

Vergüenza con respecto a los pasaportes

La venta ilegal de pasaportes de la República de las Islas Marshall es un problema notado por los indígenas marshalleses pues los inmigrantes se están apoderando de sus trabajos. Sin embargo, para los ricos inmigrantes asiáticos, convertirse en ciudadanos de las Islas Marshall brinda seguridad para las inversiones en la industria turística y en la competencia por los recursos en el área de tierra tan limitada que constituyen los atolones de las Islas Marshall. La venta ilegal de pasaportes es también una forma muy fácil para los inmigrantes asiáticos de obtener la ciudadanía americana.

GUAHAN (GUAM)

La economía de Guam todavía tiene problemas debido al repliegue económico asiático. El índice de desempleo está en el 14%; el estado de los Fondos Generales del gobierno es deprimente, a pesar de un congelamiento de los contratos proclamados por el ejecutivo y la legislatura, y se pide un recorte del 10% en el presupuesto; el déficit del gobierno es actualmente de $114 millones y no está siendo contenido por ningún esfuerzo sostenido; y el principal motor económico de la isla, el turismo, está funcionando en un nivel 16-18% más bajo que el año pasado.

Otro tema actual es el de la inmigración ilegal en el Territorio. Ya a fines de junio de 1999, en su primera aparición ante la Asamblea General de la ONU, el Gobernador de Guam había expresado sus preocupaciones. Refiriéndose al estatus no autónomo de Guam como una *"amenaza a la visión de progreso social y económico de Guam"* expresó que *"tanto la inmigración legal como la ilegal bajo el régimen del poder Administrador amenazan el equilibrio necesario para impedir que nuestra frágil economía y medio ambiente se quebranten bajo su presión"* (Gutiérrez 1999a, 2). A comienzos de marzo de 2000, el Congresal Underwood introdujo la Resolución 945 de la Cámara pidiendo una enmienda de la Ley de Inmigración y Naturalización para prohibir que individuos extranjeros sin documentos reclamaran asilo político en Guam. Después de visitar la "ciudad" de tiendas de campaña de inmigrantes ilegales en Tinian y de hablar con funcionarios de la ONU allí, Underwood enmendó esta resolución. Concluyó que se podría permitir el asilo, pero que deberían utilizarse las normas de las Naciones Unidas con respecto a Guam, que son más estrictas y más efectivas que las previstas por la ley de inmigración de los EE.UU. Exhortó a sus colegas del Congreso a reprogramar algunos fondos suplementarios dirigidos a los continuos esfuerzos en Kosovo y América Central para que el Servicio de Inmigración y Naturalización pudiera realizar su trabajo en Guam y la Marianas Septentrionales.

Protesta chamorro contra encarcelamientos debidos a luchas sobre derechos territoriales

La Coalición de Chamorro Colonizados de Guam realizó dos manifestaciones a comienzos de enero. La primera manifestación fue el 7 de enero de 2000, realizada a causa de la sentencia de Ángel Santos a seis meses de prisión por continuar su protesta sobre la apropiación de la tierra de su abuelo por parte del gobierno de los EE.UU. Él había desafiado una orden de restricción impuesta por la Corte del Distrito de los EE.UU. y fue arrestado por su desacato. La Corte sentenció al Sr. Santos a seis meses de prisión. Mientras aguardaba la sentencia de la Corte, el Sr. Santos inició una huelga de hambre para demostrar su resolución y compromiso personal de continuar luchando por los derechos de la Nación Chamorro hasta que se haga justicia.

La segunda manifestación tuvo lugar el 14 de enero de 2000 en ocasión de una visita de una delegación de Congresales de los EE.UU. para inspeccionar las bases militares de la isla. La Coalición hizo una lista de cuatro temas para la protesta, que se presenta a continuación: 1) Compensaciones de guerra; 2) Devolución de tierras excedentes bajo control federal; 3) Estatus político; y 4) Limpieza del medio ambiente de tierras usadas por el ejército de los EE.UU. y otras agencias federales.

Oposición chamorro a los misiles de EE.UU. en Guam

La Coalición de Chamorros Colonizados de Guam ha reaccionado contra recientes intentos del ejército de los EE.UU. para desplegar misiles cruceros convencionales lanzados desde el aire en Guam, diciendo que se opondrá firmemente a cualquier intento de militarizar más la isla.

Casi el 20% de la isla fue entregada al Departamento del Interior de los EE.UU. como "reservas de la fauna", pero los activistas *chamorro* temen que estas tierras podrían ser reclamadas por el ejército de los EE.UU. para militarizar más la isla. El temor está bien fundado dada la reciente acción de la Marina de los EE.UU. para cancelar la transferencia al gobierno de Guam del ex Establecimiento de Reparaciones de Navíos de la Marina de los EE.UU. La Marina alega ahora que puede haberse "apresurado" en sus acciones para disminuir las bases en Guam.

El reciente intento del ejército de los EE.UU. es alarmante y junto con la prueba del Sistema de Defensa de Misiles "Theater" en el atolón de Kwajalein, señala una creciente militarización del Pacífico que debe ser rechazada y condenada.

KA PAE'AINA (HAWAII)

Los debates sobre las Audiencias de "Reconciliación" y la "Ley de Reconocimiento" Akaka fueron los temas más importantes de la lucha de los *kanaka maoli* por el reconocimiento y la soberanía en el año 2000.

Las audiencias de "Reconciliación" comenzaron después de seis años de inacción y creciente fermentación kanaka maoli a continuación de la Resolución de Disculpa del Congreso de los EE.UU. de 1993 (Public Law 103-150). Introducida por el Senador kanaka maoli de los EE.UU., Daniel Akaka, la resolución conjunta reconoció que la conspiración e invasión armada y reconocimiento del gobierno provincial de los colonos blancos en 1893 constituían violaciones de los tratados entre los dos países y del derecho internacional, y una supresión de la autodeterminación kanaka maoli.

Sin embargo, el 23 de febrero de 2000, la Suprema Corte de los EE.UU. dictaminó en el caso Rice vs. Cayetano, derogando una ley de 1978 del Estado de Hawai'i por una mayoría de 5 Jueces contra 4. Esta sentencia de corte significa que la ley, que permite sólo a los kanaka maoli votar por administradores de la Oficina Estatal de Asuntos Hawaiianos, es inconstitucional porque está basada en la raza. Entonces, los desposeídos kanaka maoli que ahora constituyen sólo el 20% de la población de 1,2 millones de habitantes en su propio territorio de Ka Pae'aina son considerados racistas por la ley de los EE.UU. por ejercer una limitada autonomía como custodios bajo el control del estado. Según Kekuni Blaisdell, esto significó que los kanaka maoli estaban en peligro de que su estatus político permanente fuera determinado por el gobierno de EE.UU., y esto estaba ocurriendo sin su iniciativa, aporte o informado consentimiento.

Para contrarrestar temores de que los programas de salud, educación, vivienda y otros programas sociales Federales de los EE.UU. fueran objetados en las cortes de los EE.UU., el Senador Daniel Akaka anunció la formación de un "Equipo de Trabajo Nativo Hawaiiano". El Equipo de Trabajo representaría al pueblo de Hawai'i y al gobierno de los EE.UU. y prepararía legislación para proteger programas financiados federalmente por los EE.UU. para los kanaka maoli, declarando a los kanaka maoli indígenas de los EE.UU. Entonces, se razonó, los kanaka maoli tienen una relación legal, política y fiduciaria con los EE.UU. similar a la de los "otros nativos americanos", los *indios* americanos y los *nativos* de Alaska.

En un Foro celebrado el 29 de marzo en la Universidad de Hawai'i, kanaka maoli proindependentistas denunciaron las posiciones Rice y Cayetano. La decisión pro-Rice, según Blaisdell, confirma que el colonialismo de los EE.UU. y el racismo antikanaka maoli siguen estando vivos. El racismo antikanaka maoli es evidente en la posición, apoyada por el Estado de Hawai'i, la Oficina de Asuntos Hawaiianos (OHA), el Subsecretario de

Justicia de los EE.UU. y la delegación Congresal de Hawai'i, que establece que los kanaka maoli son "nativos americanos" y este estado subordinado debería ser afirmado por el "reconocimiento federal" del Congreso de los EE.UU. En mayo, kanaka maoli proindependentistas se reunieron con el Senador Akaka y le exhortaron adherir a los reconocimientos de su Resolución de Disculpa de 1993, como la supresión de los EE.UU. de la inherente soberanía kanaka maoli y el derecho a la autodeterminación. La delegación también enfatizó la importancia del Artículo VI de la Constitución de los EE.UU. que establece que los EE.UU. deben cumplir con los tratados y con el derecho internacional, como la restitución, por ser "la suprema ley de la nación".

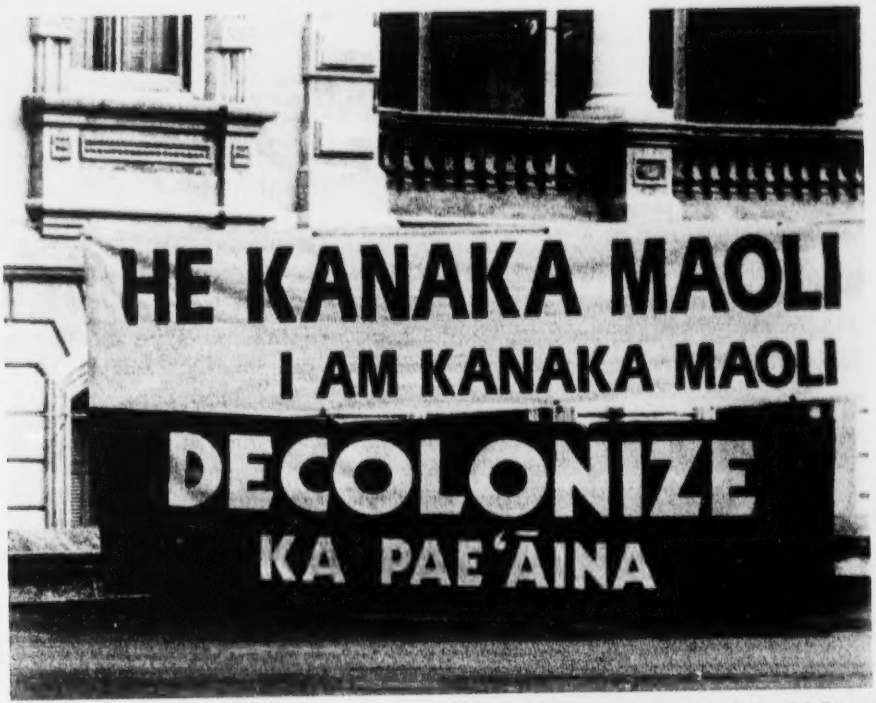
Impávido ante la crítica, el segundo proyecto de legislación de Akaka fue enviado por fax a la prensa el 3 de julio, pero no fue distribuido a los kanaka maoli.

Desde el comienzo, los kanaka maoli pro-independentistas se han opuesto a los tres principales aspectos de la legislación de Akaka:

1. El intento es reducir a los kanaka maoli al estatus de indios americanos, supuestamente para salvar programas para los kanaka maoli magramente financiados federalmente que promueven la dependencia colonial. Este intento está vinculado con la política a largo plazo de los EE.UU. de mantener el nuclearismo, la ocupación militar y la explotación económica de Kanaka Maoli Ka Pae'aina, para asegurar el control de los EE.UU. sobre la Cuenca y Costas del Pacífico, esencial para la política de globalización de los EE.UU.
2. El proceso es predeterminar una permanente relación política subordinada kanaka maoli con los EE.UU., en violación de la soberanía inherente kanaka maoli y el derecho a un verdadero y pleno proceso de autodeterminación, basado en las tradiciones culturales kanaka maoli y bajo una observación imparcial internacional.
3. El contenido de la ley destruye a los kanaka maoli como pueblo y como nación diferente con su propio territorio, cosmología, historia, cultura, lengua y futuro.

Los kanaka maoli proindependentistas argumentaron que la mayoría de los kanaka maoli siguen sin ser conscientes del impacto destructivo de esta legislación si se convirtiera en ley.

A pesar de las turbulentas protestas kanaka maoli durante las audiencias de Honolulu en septiembre, la Ley Akaka fue aprobada por el Comité de Asuntos Indios del Senado de los EE.UU. La Cámara de Representantes de los EE.UU. también la aprobó el 26 de septiembre. Sin embargo, todavía tiene que ser presentada a la sala del Senado de los EE.UU. para ser votada debido a nuevas objeciones de senadores republicanos a que los kanaka maoli adquieran un estatus político análogo al de los indios americanos.


HE KANAKA MAOLI
I AM KANAKA MAOLI
DECOLONIZE
KA PAE'ĀINA

Fotos: Ed Greevy

Las demandas legales de seguimiento de "proteccionistas igualitarios" pro Rice contra los kanaka maoli se beneficiaron con esto; y recientes foros comunitarios sobre cultura y raza, dominados por personas no kanaka maoli, han aumentado las expresiones no nativas sobre el tema de la soberanía kanaka maoli. Esto ha creado una curiosa y dolorosa paradoja para este pueblo, que tienen una tradición de compartir y hacerse cargo los unos de los otros. Los kanaka maoli colonizados son acusados de racismo por intentar sobrevivir como un pueblo distinto y una nación. Los colonizadores norteamericanos y sus leyes de "ningún voto basado en la raza" e "igualdad de protección" ahora están siendo usados para negar a los desposeídos kanaka maoli cualquier derecho especial por ser el pueblo anfitrión.

RAPA NUI (ISLA DE PASCUA)

El pueblo indígena *rapa nui*, que ahora suma unos 3.000 individuos, ha sobrevivido 136 años de continua opresión por parte del gobierno de Chile, el cual los priva de los derechos humanos básicos en su propio territorio. En septiembre de 1888, el Rey Atamu Tekena, Jefe del Antiguo Consejo, firmó un acuerdo con el gobierno de Chile para la protección de los 350 isleños rapa nui restantes a cambio de la soberanía. Este tratado fue violado en 1891 cuando Chile arrendó la isla a una compañía británica.

En 1914, el Sr. Daniel María Chávez, Jefe del Antiguo Consejo, organizó una lucha por tierras, tratamiento equitativo, justicia y derechos humanos. Los oficiales chilenos lo arrestaron y juzgaron en un tribunal en un barco. Murió misteriosamente en el barco en ruta a Valparaíso, Chile. Similarmente, dos años más tarde, el Rey Riro rapa nui murió en Chile cuando había ido a firmar un acuerdo con el gobierno.

En 1933, el gobierno de Chile registró la tierra rapa nui bajo el Artículo 590 del Código Civil que estipula que cualquier tierra sin dueño registrado dentro de las fronteras territoriales de Chile pertenece al estado. En 1979, después del golpe de Pinochet, el gobierno chileno decretó una nueva ley Nº 2885, que habilitaba al presidente chileno a dar títulos y escrituras, legitimando la inscripción estatal de 1933.

En 1989, el Consejo Antiguo Rapa Nui presentó una demanda legal contra el Estado de Chile, acusándolo de usurpación de tierras. Como resultado, el gobierno chileno creó la ley indígena, que reconoce y favorece los derechos y valores culturales del pueblo rapa nui cumpliendo con los principios y recomendaciones de las Naciones Unidas para nativos y minorías étnicas en todo el mundo. No obstante, la ley chilena es perjudicial para el pueblo pues legitima la usurpación de tierras bajo el ámbito del Decreto 2885 y la inscripción de 1933.

Durante el año 2000, los rapa nui continuaron su lucha contra la ley chilena. Aislados de las principales rutas del Pacífico, no tienen acceso a recursos legales para sustentar su lucha por la tierra. El apoyo al pueblo rapa nui es un importante componente de la más amplia lucha por la descolonización en el Pacífico.

AFRICA DEL NORTE

AFRICA DEL NORTE

LOS PUEBLOS AMAZIGH

Los pueblos *amazigh* constituyen la abrumadora mayoría de la población del norte africano. No obstante, los gobiernos de estos estados no revelan las estadísticas correctas y una serie de pueblos indígenas están arabizados. Todos los libros de historia confirman que los amazigh (una palabra que significa "los Libres" en la lengua amazigh), conocidos en algunos libros de historia como "beréberes" (como los extranjeros llaman a los pueblos indígenas del Norte de África), son la población original del Norte de África. Los *tuareg* que viven en el desierto forman parte de los pueblos amazigh.

El Movimiento Amazigh

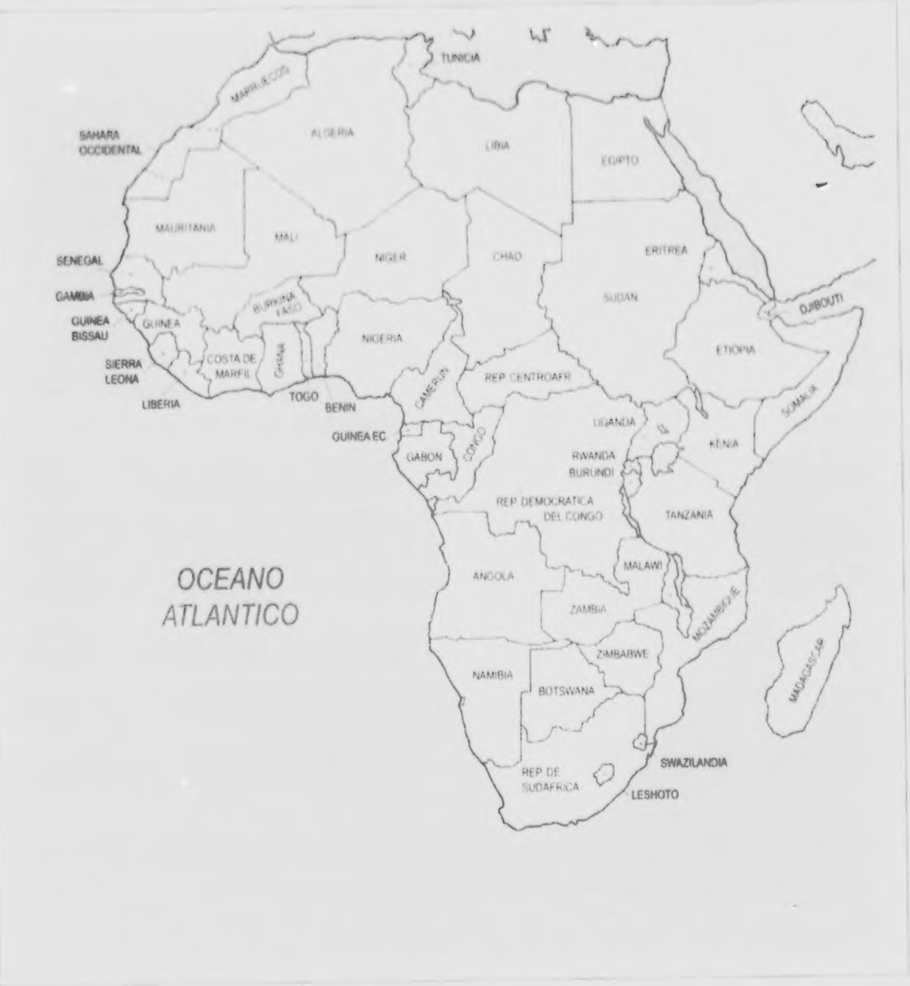
El Movimiento Amazigh fue iniciado por estudiantes universitarios amazigh en los años 60. Los objetivos del movimiento eran, desde el mismo comienzo, los siguientes:

- Reconocimiento en la Constitución de su identidad cultural, lingüística y de civilización.
- Integración de la lengua amazigh en el sistema educativo.
- Integración de la lengua amazigh en los medios de difusión.
- Reconocimiento de los derechos humanos y de los derechos culturales y lingüísticos en un pie de igualdad.

En los años 60, una serie de movimientos culturales amazigh se hicieron visibles en Argelia, Marruecos y en países europeos adonde muchos ciudadanos de esos países habían emigrado. Estas asociaciones coordinaron sus actividades y se reunieron en el Congreso Internacional Amazigh, en el cual tomaron parte muchas asociaciones de los países del norte africano, Europa, América y Canadá. Más adelante, el movimiento amazigh se unió al movimiento indígena internacional.

Desde su participación en los congresos internacionales de derechos humanos por primera vez en 1993, el movimiento amazigh ha asistido a las reuniones del movimiento indígena internacional celebradas en Ginebra y ha tomado parte en las actividades políticas, sociales, económicas y cultu-

BEST COPY AVAILABLE


TUNICIA
MARRUECOS
SAHARA OCCIDENTAL
ALGERIA
LIBIA
EGIPTO
MAURITANIA
MALI
NIGER
CHAD
ERITREA
SENEGAL
GAMBIA
GUINEA BISSAU
GUINEA
BURKINA FASO
SUDAN
DJIBOUTI
NIGERIA
ETIOPIA
SIERRA LEONA
COSTA DE MARFIL
GHANA
LIBERIA
TOGO
BENIN
CAMERUN
REP CENTROAFR
SOMALIA
UGANDA
KENIA
GUINEA EC
GABON
CONGO
RWANDA
BURUNDI
REP DEMOCRATICA DEL CONGO
TANZANIA
MALAWI
OCEANO ATLANTICO
ANGOLA
ZAMBIA
MOZAMBIQUE
MADAGASCAR
ZIMBABWE
NAMIBIA
BOTSWANA
SWAZILANDIA
REP DE SUDAFRICA
LESHOTO

rales diarias así como también en equipos de trabajo de las Naciones Unidas sobre los derechos de los pueblos indígenas.

Las demandas del movimiento amazigh para enmendar la Constitución y tomar en consideración las múltiples dimensiones de la identidad marroquí en su preámbulo fueron ignoradas por muchos años. La política de arabización que fue aplicada por el Estado Nacional a continuación de la independencia condujo a una severa discriminación del pueblo amazigh por todos los medios posibles. Las lenguas amazigh fueron excluidas de la educación, de los medios de difusión y de la administración. A los artistas se les prohibió participar en los concursos nacionales porque sus productos eran en lengua amazigh. Los activistas amazigh de Marruecos, Argelia y Libia fueron arrestados por escribir en su lengua materna. Los niños fueron privados del uso de sus nombres amazigh. La política de arabización

BEST COPY AVAILABLE

impidió a la mayoría de estos pueblos el acceso a la educación y a los aspectos más fundamentales de una vida digna como agua, electricidad, medios de comunicación o establecimientos sanitarios.

Después de muchos años de ignorancia, arrestos e intentos decididos del gobierno de hostigar al movimiento para obligarlo al silencio, las cosas parecieron desarrollarse en una dirección diferente.

En 1998, el gobierno reconoció por primera vez la dimensión amazigh de la identidad marroquí en una declaración oficial. En una reciente enmienda de la Constitución en Argelia, el gobierno reconoció oficialmente la dimensión amazigh de la identidad argelina. Se estableció por primera vez una institución oficial en el Norte de África, la Alta Comisión para la Amazighidad fue establecida en Argelia para proponer programas y reglamentaciones que pudieran contribuir a la integración relativa de la lengua amazigh en las escuelas argelinas. Muchas otras organizaciones y asociaciones amazigh salieron a luz en las Islas Canarias, donde se realizó en 1997 el primer Congreso Internacional Amazigh después del congreso constitutivo de 1995.

A pesar de algunos progresos en la posición de las instituciones oficiales, las circunstancias de los pueblos indígenas del Norte de África han cambiado muy poco. La formación de asociaciones amazigh en Libia está todavía prohibida. La situación de los pueblos indígenas de Túnez está en deterioro. Se han notado muchos retrocesos en Marruecos y Argelia en el año 2000.

Acontecimientos significativos en la vida de los pueblos indígenas del Norte de África, particularmente en Marruecos

La mayor reunión de asociaciones amazigh en el seminario regional organizado en asociación con la Organización Internacional del Trabajo en el año 2000

El seminario regional sobre el Convenio 169 relativo a los derechos de los pueblos indígenas, organizado el 21-22-23 de enero de 2000 por la Asociación Tamaynut en asociación con la Organización Internacional del Trabajo, fue un evento destacado en la historia del movimiento amazigh en el Norte de África. Aproximadamente 55 asociaciones amazigh y secciones culturales y desarrollistas así como representantes de muchos países del Norte y Oeste de África se reunieron por primera vez para intercambiar ideas y opiniones sobre la actual situación de los pueblos indígenas, examinar sus futuras perspectivas y proponer recomendaciones y planes. Las recomendaciones del seminario fueron dominadas por la inmediata adopción del Convenio 169 sobre los derechos de los pueblos indígenas y tribales. Luego subrayaron que se debía confirmar los otros derechos, ya declarados, relativos al reconocimiento Constitucional de la identidad cultural, lingüística y de civilización de los pueblos indígenas y que la lengua materna debería ser incorporada en la educación y los medios de difusión. La importancia de este seminario radica en la reunión directa de asociaciones culturales que defienden los derechos humanos con organizaciones económicas y desarrollistas.

Anuncio de la Declaración Amazigh y la constitución del comité de 15 miembros, el 13 de mayo de 2000

Mil intelectuales y cuadros amazigh elaboraron una declaración política preparada por el académico Mohamed Chafik, en la cual exigen el reconocimiento oficial del carácter amazigh de Marruecos, en otras palabras el reconocimiento político de la identidad cultural, lingüística y de civilización de los pueblos indígenas marroquíes. El Rey Mohammed VI nombró un comité constituído por el jefe de su gabinete, el jefe del Comité Real para la Educación y el vocero oficial del Palacio. Este comité se reunió con representantes de los signatarios de la Declaración y les comunicó que el Rey está dispuesto a considerar sus demandas. Sin embargo, hasta ahora no hay ninguna respuesta. En mayo de 2000 se celebró una importante reunión para discutir la estrategia del movimiento amazigh con vistas a democratizar el país y el régimen de Marruecos. La reunión también intercambió opiniones sobre cómo influir en las decisiones culturales y políticas. Al final de la reunión, se eligió un comité de 15 miembros, asegurando una representación geográfica justa de las regiones más importante de Marruecos. A este comité se le encomendó la tarea de preparar el Congreso Amazigh a celebrarse a fines del año 2001. También ha celebrado muchas reuniones para examinar la posibilidad de colaborar con otras asociaciones amazigh para que el movimiento amazigh pueda actuar en dos frentes, el cultural y el político, como lo sugirió un activista del movimiento amazigh del Norte de África.

Expropiaciones en la provincia de Agadir y una "sentada" de las asociaciones desarrollistas amazigh el 4 de julio de 2000

El Estado Nacional reemplazó al colonizador en la aplicación de las reglamentaciones francesas relativas a la transferencia de tierras, bosques, océanos, minerales al Estado francés, (y luego al estado nacional), ignorando las reglas de los pueblos indígenas que prevalecían antes de la colonización.

Durante el año 2000, el gobierno realizó expropiaciones de tierras y bosques en la región de Tafraout, en el sur de Marruecos, región de Massa-Daraa. La población local luchó contra esta invasión de sus tierras con protestas y quejas. Sin embargo, esto no fue suficiente para poner fin a este proceso. Entonces se organizó una "sentada" frente al parlamento en Rabat, el 4 de julio de 2000, que condujo a la apertura del diálogo y a un congelamiento temporario del proceso de expropiación.

Adopción de una Carta de Educación y la protesta de las asociaciones amazigh – abril, 2000

A comienzos del año 2000, el Comité Real de Educación (un comité establecido sin participación de las asociaciones amazigh), anunció la Carta de Educación. En la opinión de las asociaciones amazigh, esta Carta no respeta la identidad cultural y lingüística de la población amazigh ni considera la lengua amazigh como una lengua oficial. Las asociaciones amazigh denunciaron esta Carta porque consagra una política de discriminación sobre la base de la lengua y apunta a arabizar a los amazigh mediante una política de arabización presentada en una Carta abusivamente llamada "nacional".

Durante la reunión de la sesión parlamentaria de abril de 2000, las asociaciones amazigh organizaron una "sentada" frente al Parlamento para exigir que se elaborara una ley para preservar su identidad cultural y lingüística y que la lengua *tamazigh* se incorporara a la educación y los medios de difusión. Sin embargo, el gobierno prohibió la "sentada" a pesar del hecho de que fue organizada de acuerdo a todas las formalidades legales. Fuerzas policiales se hicieron presentes en la avenida principal donde se esperaba que tuviera lugar la "sentada", en un intento de impedir a los manifestantes protestar o reunirse frente al Parlamento.

Se impide a los niños amazigh registrar sus nombres en los Libros de Registro Familiar

Las autoridades continuaron privando a los amazigh del derecho a registrar a sus niños con nombres amazigh. A una gran cantidad de niños no se les permitió registrar sus nombres en los Libros de Registro Familiar con la excusa de que esos nombres no son ni marroquíes ni árabes, lo cual significa simplemente ¡qué todo lo que no es árabe no es marroquí! *Tunarug, Titrite, Massine* son todos nombres de niños nacidos en 2000 y todavía están privados de su derecho a llamarse así.

La marcha en apoyo de los derechos de la mujer (12 de marzo de 2000) – abandono del plan del gobierno para la participación de las mujeres hace una contramarcha

La mayoría de las mujeres norafricanas sufren la discriminación de varias maneras. El analfabetismo entre las mujeres es a veces tan elevado como de un 90% (en Marruecos). Esta situación las fuerza a hacer sólo trabajos menores por muy poca paga. Aunque las Constituciones de los países norafricanos reconocen la igualdad de derechos políticos en teoría, las mujeres todavía están privadas de estos derechos. Esto sucede debido a que las elecciones todavía son manipuladas y la voluntad del pueblo no es respetada en el Norte de África. En cuanto a la igualdad con respecto a los derechos civiles, esto no figura ni en las Constituciones ni en la legislación vigente.

La mujer amazigh sufre una doble discriminación. En adición a los mencionados sufrimientos de las mujeres en general, la mujer amazigh es también privada del reconocimiento constitucional de su identidad lingüística, cultural y de civilización. También se le han negado otros derechos positivos que las antiguas reglamentaciones amazigh les otorgaban, como *Tamazzalte*, una costumbre que estipula que la esposa tiene el derecho a la posesión de la mitad de las propiedades que su esposo adquiera después del matrimonio. Es más, se le ha negado el derecho a tener un rol efectivo en la vida cultural y política porque ella es culturalmente marginada, un resultado directo de no usar la lengua tamazigh en los medios de difusión, la administración o la vida oficial.

Algunas de las asociaciones feministas se organizaron en un movimiento feminista, un marco que les permite luchar para establecer la igualdad, abolir la discriminación e intentar hacer que el gobierno marroquí retire sus reservas relativas al Convenio sobre la Abolición de Todas las Formas de Discriminación Contra la Mujer, sobre la base de que algunos de sus artículos no son compatibles con la legislación islámica.

Debido a todo esto y para aplicar el plan de lucha de Pequín por los derechos de la mujer, el movimiento feminista organizó una enorme marcha el 12 de marzo de 2000, en apoyo de una propuesta presentada por un Ministro para aplicar un plan que involucrara a las mujeres en el desarrollo. Sin embargo, el gobierno no procedió de acuerdo a este plan y el Ministro que propuso el Plan fue retirado de su cargo en la reestructuración gubernamental de septiembre de 2000.

El descubrimiento de petróleo y oro y la expropiación de tierras amazigh sin consultar con sus propietarios en septiembre de 2000

En septiembre de 2000, se anunció oficialmente que se había descubierto petróleo y oro en tierras marginadas que habían sido excluidas de todo plan de desarrollo. Esta fue la primera vez que tales noticias llegaban hasta los medios de difusión.

Se anunció que se había descubierto una gran cantidad de petróleo en la región amazigh de Talsint, en el sudeste de Marruecos. Las tierras de la población local fueron usadas sin siquiera consultar a sus dueños, conforme a las reglas coloniales promulgadas por los franceses y usadas por el Estado Nacional, no tomando en consideración ni a sus ciudadanos, ni a la nación ni las nuevas normas internacionales estipuladas en el Convenio 169 sobre pueblos indígenas en 1989.

El descubrimiento de oro en la región amazigh de Ta Ta sucedió casi al mismo tiempo. Una vez más fueron aplicadas las mismas reglas coloniales que destruyen la relación entre el pueblo y la tierra sobre la base de la identidad cultural y de civilización.

A pesar de todas estas riquezas, el Estado todavía se niega a reconocer los mínimos derechos reconocidos internacionalmente a los pueblos indígenas por el Convenio 169 sobre los derechos de los pueblos indígenas y la Declaración Internacional sobre los Derechos de los Pueblos Indígenas.

Acallamiento de los periodistas, suspensión de tres periódicos, deterioro de las libertades públicas, arresto y juicio de protestantes en la ocasión del Día Internacional de los Derechos Humanos, diciembre de 2000

Después de que el joven Rey Mohammed Sexto accedió al trono como consecuencia de la muerte de su padre en 1999, comenzaron a lucir en el horizonte signos positivos de cambio. No obstante, también hubo algunos sucesos negativos, como el juicio de una serie de periodistas, la concomitante suspensión de tres periódicos por publicar noticias relativas a la compra del Ministro del Relaciones Exteriores de una villa en Washington y por publicar una carta de un oponente de la Monarquía, con fecha de 1974, destacando que el actual Primer Ministro marroquí participó, junto con los generales, en el fallido golpe de estado de 1972 contra el Rey Hassan II.

Los tres periódicos fueron prohibidos durante 40 días. Luego se les permitió seguir publicando. El año 2000 fue testigo del mayor deterioro de la libertad de expresión y de las libertades democráticas.

Activistas de la Derecha Islámica y la Izquierda Marxista optaron por conmemorar el día de la Declaración de los Derechos Internacionales (10 de diciembre de 2000) organizando una marcha pacífica. Pero esta marcha fue prohibida y muchos activistas fueron arrestados, algunos de ellos están en prisión y otros aguardando juicio.

Según el informe internacional sobre desarrollo humano, Marruecos pasó de la posición 125 a la 126 en el año 2000.

Organización de la mayor reunión sobre derechos territoriales en Agadir, 17-18 de febrero de 2001

El movimiento amazigh está en el proceso de cambio de un movimiento cultural a un movimiento social. El año 2000 fue inaugurado con la primera reunión sobre los derechos de los pueblos indígenas, a la cual asistieron asociaciones culturales y desarrollistas. Las últimas organizaron la mayor reunión de la historia sobre derechos relativos a la tierra en Agadir, del 17 al 18 de febrero de 2001. Esta reunión examinó la actual situación y protestó contra el hecho de que las leyes coloniales todavía regían la relación entre la población local y la tierra. Un representante del Centro de Derechos Humanos en Ginebra participó en esta reunión, la que recomendó la ratificación del Convenio 169.

Las esperanzas del pueblo en los dos gobiernos de alternativa son destrozadas

Todos los gobiernos desde la independencia han sido el producto de elecciones manipuladas, como lo atestiguaron los mismos dos partidos que participaron en estas elecciones. Cuando el fallecido Rey Hassan II nombró un gobierno presidido por un líder socialista, comenzaron a aparecer esperanzas de que la situación de las masas mejoraría. Estas esperanzas fueron reforzadas cuando el joven Rey asumió el trono anunciando "un nuevo concepto de autoridad", constituyendo un comité encargado de compensar a las víctimas de arresto y torturas durante el régimen de su padre y dirigió una carta en ocasión del Día Internacional de los Derechos Humanos.

Aunque el gobierno alternativo llegó al poder como resultado de elecciones manipuladas, las esperanzas de cambio todavía eran fuertes. Sin embargo, el 4 de febrero de 2001, este gobierno finalizó su tercer año con una situación de masas en deterioro en todos los aspectos, político, social y económico. Independientemente de las promesas de cambio, aparecieron los temas de corrupción y todavía persisten algunos eventos negativos, como el juicio del joven oficial Adib en febrero de 2000, quien fue encarcelado por tres años por revelar la corrupción de sus superiores. Los niños todavía tienen prohibido usar sus nombres amazigh, una "sentada" de las asociaciones amazigh fue prohibida, los periodistas fueron juzgados y los periódicos suspendidos en septiembre de 2000.

Resumen

A pesar de todos los acontecimientos, el gobierno todavía se niega a abrir un diálogo con las asociaciones desarrollistas y culturales amazigh. Habla de democracia pero ejerce la tiranía y habla de diálogo y sin embargo sigue negando los derechos de sus ciudadanos.

No obstante, el movimiento amazigh sigue con sus métodos pacíficos para lograr una verdadera democratización del Estado y para garantizar el derecho de participación en la vida cultural y política en un sistema democrático que respete el pluralismo y la identidad cultural y de civilización de los pueblos amazigh.

AFRICA DEL ESTE

BEST COPY AVAILABLE

AFRICA DEL ESTE

ETIOPÍA

Derechos humanos en el Estado Nacional Gambela

El gobierno etíope alega respetar todos los derechos humanos fundamentales, estar dedicado y comprometido con los principios básicos del buen ejercicio de la autoridad, la justicia, la igualdad y el imperio de la ley. En la práctica, en casi todas estas áreas básicas de humanidad, demuestra lo contrario. Los partidos políticos de oposición no pueden participar libremente en actividades públicas, sus miembros y simpatizantes son intimidados y afectados por numerosas violaciones de la ley y por prácticas inconstitucionales.

Se ha informado ampliamente sobre estos hechos en el pasado, durante las elecciones de 1995 y otra vez el año pasado.

Se han emitido numerosos informes, especialmente por Amnesty International y el Departamento de Estado de los EE.UU., relativos al proceder del gobierno etíope con respecto a los derechos humanos. El gobierno ha sido sumamente criticado. El informe más reciente del Departamento de Estado de los EE.UU., emitido en febrero de 2001, dice lo siguiente:

> *"...Los registros de derechos humanos del Gobierno siguieron siendo malos; aunque hubo algunas mejoras en algunas pocas áreas, siguieron habiendo serios problemas. Las fuerzas de seguridad cometieron una serie de ejecuciones extrajudiciales y a veces golpearon y maltrataron a los detenidos. Las condiciones de las prisiones son malas. Los arrestos y detenciones arbitrarios y las prolongadas detenciones previas a los juicios siguieron siendo serios problemas. El Gobierno continuó deteniendo a personas sospechosas de simpatizar o estar comprometidas con el [Frente de Liberación de Oromo]. El Gobierno siguió deteniendo y deportando a eritreanos y etíopes de origen eritreano sin un debido proceso. Desde el inicio del conflicto fronterizo en mayo de 1998, 75.000 personas han abandonado Etiopía yéndose hacia Eritrea; la vasta mayoría fue deportada, aunque una pequeña cantidad se fue voluntariamente ...Aunque fundadas en consideraciones de seguridad nacional, las expulsiones y detenciones plantearon preocupaciones fundamentales con respecto al arresto arbitrario y la detención, el exilio forzoso, la separación forzosa de familias y temas de nacionalidad, así como las dificultades y pérdidas financieras sufridas por aquellos que fueron detenidos o expulsados. A pesar de algunos esfuerzos, la justicia siguió careciendo de*

BEST COPY AVAILABLE

> *suficiente personal capacitado y de fondos, lo cual limitó su capacidad de suministrar a los ciudadanos la plena protección prevista en la Constitución ... Aunque el sistema judicial también mostró algunos signos de creciente independencia. El Gobierno infringió los derechos de privacidad del ciudadano y la ley relativa a la orden de allanamiento fue generalmente ignorada.*
>
> *El Gobierno restringe la libertad de prensa y continuó deteniendo o encarcelando a miembros de la prensa, aunque fueron detenidos menos periodistas que en años previos. La mayoría fue acusada o condenada por incitar al odio étnico, cometer difamación o publicar falsa información en violación de la Ley de Prensa de 1992. Los periodistas siguieron practicando la autocensura...En julio, entró en vigencia una legislación que había sido aprobada en octubre de 1999 para crear una Comisión de Derechos Humanos por mandato constitucional así como una oficina del ombudsman(Defensor del Pueblo); sin embargo, ninguna entidad era operacional a fines de año. El Gobierno respetó generalmente la libertad religiosa; sin embargo, en una ocasión, las autoridades locales infringieron este derecho. El Gobierno restringió la libertad de movimiento ... La violencia y la discriminación societal contra las mujeres y los abusos de niños siguieron constituyendo un problema... La explotación de niños con propósitos económicos y sexuales también siguió siendo un problema. Continuó la discriminación societal contra las minorías religiosas y étnicas. El trabajo infantil, particularmente en el sector informal, siguió siendo un problema. El trabajo forzoso, incluyendo el trabajo forzoso infantil, también fue un problema y hubo informes de tráfico de personas...".*

Esto cubre y refleja ciertamente el sufrimiento general común de todos los etíopes, independientemente de su origen étnico, creencia religiosa, ubicación geográfica o antecedentes sociales y económicos. Sin embargo, todos estos informes siguen estando sumamente limitados al centro y a los estados "más desarrollados" de Tigrai, Amhara, Oromo y Pueblos del Sur.

Los detalles de los abusos de los derechos humanos contra los pueblos indígenas en los estados periféricos "menos desarrollados", Gambela, Afar, Somali, y Besnshingul-Gumuze, que tienen antecedentes económicos agropastorales y sociales comunes, han recibido mucho menos atención.

En realidad, las condiciones de los derechos humanos en estos estados de las tierras bajas brindan detalles exactos sobre la falta de compromiso y respeto del gobierno etíope con respecto a la observancia de las normas de derechos humanos internacionalmente aceptadas, que alega aceptar e implementar. En estas áreas, los partidos políticos de oposición, dedicados a mejorar los medios de subsistencia de su pueblo, se encuentran con que sus miembros son regularmente maltratados, encarcelados, torturados, expulsados de sus cargos de funcionarios públicos, detenidos sin juicio e incluso muertos. Los gobiernos estatales locales, sumamente controlados por las autoridades del Frente Democrático Revolucionario Popular Etíope, en el poder, en Addis Ababa, demuestran una completa falta de interés por hacer participar al público en general, por la promoción de una cultura democrática de gobierno y de un buen ejercicio de la autoridad, de la libertad de expresión y discurso. El resultado es la práctica difundida de las violaciones de derechos humanos, la cual es mayormente ignorada.

Los temas de desarrollo, vitales y particulares para los pueblos indígenas de estos estados regionales, son ignorados rutinariamente tanto por el gobierno federal como por las administraciones locales, o son mantenidos en secreto. El pueblo sigue marginado y abandonado, desconociendo las actividades sociales, políticas y económicas de sus propios territorios. El público general en estos estados nacionales es incapaz de participar activamente en temas que afectan directamente a sus vidas. Las políticas y programas, aunque se alega frecuentemente que incorporan los intereses locales, son regularmente impuestos sin consentimiento ni consulta.

Arrestos y detenciones en el Estado Nacional Gambela

El gobierno del Estado Gambela lanzó recientemente una nueva ola de represión, arrestando al menos a siete miembros líderes de la oposición, Congreso Democrático Popular de Gambela (GPDC), y a ancianos de las comunidades. Ellos son:

- Embajador Ophato Wa-Aliwo
- H. Ogud Wu-Nyigwo (Capt.), un anciano *gambela* arrestado en el distrito de Abwobo y que ahora está en la prisión Gambela.
- Omot Wu-Ojulu (Sr.), miembro del Consejo Estatal de Gambela, también arrestado en Abwobo, y llevado a la prisión Gambela.
- Ajau wu-Odol (Sr.), arrestado en la ciudad de Gambela y encarcelado en la prisión Itang.
- Okony Nyu-Omot (Sra.), arrestada en Itang y luego transferida a la prisión de Gambela.
- Beay Nyu-Ochar (Sra.), también arrestada en Itang y transferida a la prisión de Gambela.
- Kuwot Wu-Teferri (Capt.), miembro del Consejo Estatal de Gambela, arrestado en el distrito de Abwobo y ahora encarcelado en la prisión de Gambela.

El Embajador Ophato Wa-Aliwo fue liberado bajo fianza después de cinco días; los otros todavía están detenidos (abril de 2001). No se han presentado cargos contra ellos. El arresto de Omot wu-Ojulu y Kuwot Wu-Teferri, ambos miembros del Consejo Estatal de Gambela, constituye una violación de los derechos constitucionales de los miembros electos de consejo estatal.

Estas son sólo las detenciones más recientes de una larga lista que se remonta varios años atrás.

En mayo de 2000, el gobernante Frente Democrático Popular de Gambela (GPDF), el partido substituto del EPRDF en el Estado Gambela, alegó una victoria abrumadora en las elecciones generales. Los alegatos de la oposición del GPDC sobre repetidas violaciones de derechos humanos contra sus miembros y simpatizantes fueron ignorados por el gobierno, y también lo fue la ampliamente informada intimidación realizada por los soldados del EPRDF contra la población local durante la campaña electoral. Es común que los jóvenes sean arrestados y detenidos en guarniciones militares, en el centro de la ciudad o fuera de la misma. Son severamente golpeados por los soldados, dejándoles a veces con daños permanentes. Algunos fueron liberados con amenazas de muerte si se quedaban en la región. El resultado ha sido la introducción de un clima de terror. Muchos que han sufrido ese tratamiento brutal no se atreven a hablar sobre su experiencia por temor a las represalias, preocupados por su propia seguridad si sus nombres aparecen en público. Muchos *anuak* están huyendo de la región, en algunos casos cruzan incluso la frontera con Sudán; otros grupos étnicos del Estado Gambela están sufriendo igualmente.

En realidad, los miembros y simpatizantes del GPDC, el único partido de oposición en Gambela, han sido considerados como objetivo desde 1998. Muchos permanecen en detención sin juicio, otros han desaparecido o han sido muertos. Hoy, más de 300 individuos acusados de pertenecer al GPDC o apoyar al partido, están detenidos en las espantosas y superpobladas prisiones del Estado Gambela. Hace pocos meses, se informó que Omot wu-Obang Onugi, uno de los miembros fundadores del GPDC y un ex director del departamento de Planificación y Economía del Consejo Estatal de Gambela, había muerto en la prisión de Gambela. Aparentemente se le había negado el acceso a servicios médicos y sufrió serios maltratos cuando estaba en prisión.

Se informa que muchos otros están en condiciones críticas por las mismas razones:

- El año pasado, dos anuak, Gog wu-Omot y Abulla wu-Okello, fueron muertos en puestos de guarniciones del ejército fuera de la ciudad de Gambela.
- Cinco miembros del Congreso Democrático Popular de Gambela, incluyendo al prominente activista político, Abulla wu-Obang, desaparecieron en la ciudad de Gambela. Abulla wu-Obang fue liberado de la prisión de Gambela recientemente después de haber permanecido detenido durante 2 años sin juicio; Omot wu-Obang, Gurnyang wu-Obang, Ochaan wu-Okello y Omot wa-Akway todavía siguen desaparecidos.
- Opumo wu-Oboya y Ojulu wu-Bach son de los pocos anuak con estudios. Fueron arrestados en 1998 como resultado de su activa participación en la formación del GPDC. Ninguno ha sido juzgado, ni siquiera acusado.

Elecciones locales

Recientemente se han celebrado elecciones locales en varias áreas de Etiopía. No ha habido ninguna información sobre cuándo serán celebradas en el Estado Gambela. Ahora se cree que no se realizarán hasta las próximas elecciones nacionales, dentro de cinco años. Esto se debe a las dificultades que el partido gobernante, GPDF, tuvo en obtener una mayoría en las elecciones generales a pesar de la corrupción del sistema electoral. Los cargos municipales de Gambela deberían ser ocupados a través de una elección democrática. En cambio, parece que el GPDF está nombrando personas que considera leales, sus propios miembros, para ocupar cargos sin correr el riesgo de permitir incluso elecciones controladas.

Conflicto étnico

Otro peligro es la creciente amenaza de conflictos étnicos. El conflicto entre los anuak y los *nuer*, quienes son el tercer grupo étnico mayor del sur de Sudán, ya se está extendiendo a otras áreas de Gambela. No ha habido signos de interés por parte del gobierno federal o del gobierno regional con respecto a lo que se ha convertido casi en una violencia étnica crónica. Muchos anuak han perdido sus tierras y ahora están viviendo como refugiados después de los enfrentamientos. Cientos de personas de los distritos de Jokay y Akobo se están desplazando cada año sin ninguna interferencia del gobierno. Existe una amplia sospecha de que el gobierno, en realidad, está alentando las tensiones entre los anuak y los nuer para mantener el control de una región que era virtualmente autónoma antes de la revolución etíope de 1974. La revolución destruyó en su mayor parte las instituciones políticas y la cultura anuak e hizo perder el control anuak de sus territorios.

Informes recientes dicen que más de 20.000 nuer armados han cruzado a territorios anuak, nunca antes amenazados por enemigos tradicionales, y se asentaron a lo largo de la ribera del Río Gilo. A pesar de este movimiento, que desestabilizará a toda la región, el gobierno ha permanecido silencioso. También se informa de una escalada de los conflictos entre diferentes clanes nuer en los distritos de Jokau y Akobo y, una vez más, no hubo ninguna respuesta gubernamental. La tensión entre los *majanger* (*ojang*) y los colonos de diferentes partes del país en el distrito de Godare, está también aumentando y ahora existe la posibilidad de un conflicto real. Los majanger están siendo desplazados de sus territorios por enormes compañías comerciales involucradas en la destrucción de lo que ahora es el único bosque restante en el Estado Gambela. El mismo futuro de los majanger está amenazado por las actividades comerciales, altamente rentables, que ignoran el sufrimiento de este pueblo, en la medida en que su medio ambiente y su estilo de vida son destruidos.

La explotación petrolera puede conducir a la desaparición de los anuak

El reciente convenio de exploración petrolera firmado por el gobierno etíope y la Gambela Petroleum Corporation (Pinewood Oil Company of Canada) ha provocado gran preocupación en la comunidad gambela de la región y también fuera del país. El negocio sigue siendo un secreto entre el gobierno etíope y la Pinewood Oil Company of Canada. Los pueblos indígenas del Estado Gambela, los supuestos beneficiarios, serán ciertamente afectados por las inversiones de esta compañía foránea. Sin embargo, no han sido consultados en ningún estadio de su supuesto plan de "desarrollo", ni han sido informados de ninguno de los detalles del acuerdo. Tampoco se ha informado a altos funcionarios gubernamentales locales, miembros de consejo y ancianos comunitarios sobre el plan gubernamental para sus propias tierras. A todo nivel, la acción del gobierno etíope está en clara contradicción con todos los principios constitucionales básicos así como también con los instrumentos internacionales, tratados y protocolos que ha ratificado y firmado.

No es de sorprender que los indígenas anuak estén seriamente preocupados por los efectos potencialmente devastadores de tal proyecto de desarrollo que va a ser implementado sin su consentimiento o sin una planificación demasiado aparente. En el pasado, esos proyectos de desarrollo han sido instituidos alegando que conducirían a mejoras significativas. Han incluido proyectos como la Granja Estatal Abwobo (Abobo) y la represa de irrigación Alwero (Alworo), que todavía no están en funcionamiento hasta ahora. Estos dos proyectos privaron a los habitantes locales de grandes áreas de tierras fértiles, desplazándolos sin ninguna compensación y negándoles el acceso a cementerios ancestrales, forzando a la gente a convertirse en refugiados en sus propios territorios. Más de 60.000 personas de las tierras altas fueron asentadas en tierras anuak, desplazando forzadamente a los dueños anteriores. Los resultados han sido una significativa intensificación de los niveles de pobreza, el alcoholismo y el suicidio entre los anuak, así como también otros efectos psicológicos y emocionales.

Tampoco el acuerdo sobre el petróleo es la primera iniciativa gubernamental que afecta los estilos de vida de los pueblos locales y el medio ambiente. Ya en los años '70, hubo intentos de limpiar las tierras anuak a lo largo del Río Openo (Baro). Esto fue bloqueado por los esfuerzos de la comunidad internacional, con la activa participación de la Comisión Europea (CE) y de las campañas de Anti-Slavery Society. Ahora, el actual gobierno etíope, que ha despreciado, ignorado y marginado a los pueblos indígenas, está intentando llevar adelante los mismos proyectos otra vez.

Dadas las negativas experiencias pasadas de los proyectos de desarrollo, los anuak resistirán la implementación de los así llamados proyectos de "desarrollo" que son implementados sin consulta ni discusión. Ellos ya desconfían mucho de la estrategia de agotar los recursos, una estrategia que no contribuye en nada al bienestar social y a la realización económica del Estado Gambela. Esos proyectos, que ignoran la importancia de la participación y representación indígena, son demasiado proclives al fracaso, conllevando desastres con respecto a los recursos humanos, la fauna y el medio ambiente en general.

Gambela es una de las potenciales áreas turísticas subutilizadas de Etiopía, con numerosas variedades de animales salvajes y grandes cantidades de peces diferentes en los ríos, ¡particularmente en las áreas elegidas para la exploración petrolera!

Los problemas actuales de Gambela no pueden justificar la implementación de un proyecto tan ambicioso y destructivo. Los pueblos indígenas viven de la agricultura de subsistencia, la caza, la recolección y la pesca. Ha habido pocos intentos del gobierno para hacerlos participar en cualquiera de las importantes actividades económicas del mundo moderno. No es de sorprender ver que los beneficios de esos proyectos ambientalmente y socialmente destructivos no tienen la intención de beneficiar a los pueblos indígenas del área. Es más, adicionalmente, las instituciones sociales y económicas siguen siendo inadecuadas y serán incapaces de sustentar o enfrentar las importantes amenazas de salud que resultarán de la implementación de este proyecto.

Las áreas específicas identificadas por el gobierno para la exploración son: Adhura y Jor, ambas muy carentes de facilidades sanitarias. Ambas contienen importantes ríos de pesca, el Gilo y el Adhura (Adura) muy utilizados por los pueblos indígenas locales como fuente principal de alimentos. Los efectos ambientales de este proyecto serán devastadores para la comunidad anuak de este lugar y reducirán seriamente las fuentes alternativas de alimentos para la población gambela en su conjunto.

En realidad, el acuerdo amenaza la destrucción del estilo de vida anuak, su cultura y tradición, así como la pérdida de control sobre su territorio.

El régimen anterior tenía poca consideración por la supervivencia de las instituciones políticas y de la cultura anuak y tampoco por su misma supervivencia como pueblo, por lo que la misma existencia del grupo étnico cayó en peligro. Poco ha cambiado, se cree ampliamente que el elevado nivel actual de violación de los derechos humanos contra los anuak es una actitud calculada para llevar a cabo los planes a largo plazo del gobierno etíope, los cuales todavía quedan por ser revelados.

Por cierto, el acuerdo petrolero del cual los anuak están excluidos podría conducir fácilmente a la completa desaparición de los anuak. Es una preocupación que es ampliamente compartida por otros pueblos indígenas del estado, quienes se ven aislados del gobierno de Addis Ababa.

KENIA

El anuncio de los resultados del Censo de Población

Los resultados del Censo de Población de 1998 fueron anunciados a fines de 1999 y es la primera vez en la historia del país que las cifras fueron separadas por distritos en vez de por grupos étnicos. Aunque se dice que el nuevo estilo de presentación de las cifras ayuda a reducir la significación del factor étnico o "tribal" (ya que dificulta deducir las cifras de población de cualquier grupo étnico) también tiende a ocultar los efectos negativos de los altos índices de migración a los territorios de los pueblos indígenas. Esa migración ha reducido la base de recursos de los pueblos indígenas marginados y muchos de ellos se han vuelto bastante vulnerables como resultado. Además de convertirse en minorías en sus propias áreas y los problemas de ser dominados en las esferas política, social y cultural.

El Proceso de Revisión Constitucional

Hace varios años que Kenia está tratando de realizar un proceso de revisión constitucional para cambiar la constitución antes de las próximas elecciones en el año 2002. El proceso comenzó por la presión ejercida en favor de una revisión constitucional antes de las últimas elecciones generales a fines de 1997, con inquietud y violencia como resultado. Como consecuencia, los partidos representados en el parlamento formaron el Grupo Parlamentario Interpartidario (IPPG) con el propósito de dirigir el proceso. Este grupo fue reemplazado más tarde por el Comité Parlamentario Interpartidario (IPPC), el cual entonces organizó una serie de reuniones con todas las partes interesadas para discutir modalidades de revisión constitucional.

Luego hubo negociaciones entre miembros del IPPC y concluyeron con la realización de cambios a la Ley de Revisión de la Constitución de Kenia, que sería la base de la revisión de la constitución. La revisión de la Ley fue finalizada a fines de enero de 1999. Sin embargo, la operatividad de esta Ley pronto llegó a un punto muerto cuando los miembros no pudieron ponerse de acuerdo sobre la fórmula para compartir los 25 escaños entre los diversos partidos políticos. Además de esto, también hubo desacuerdo sobre si el proceso de revisión debería ser realizado por ciudadanos comunes o por sus representantes parlamentarios. El Presidente sostuvo que los ciudadanos comunes, representados por el sinónimo llamado "*Wanjiku*" no tenían la capacidad de revisar la constitución y que el parlamento debería realizar la tarea en su nombre. Después de un año entero, el atolladero condujo finalmente a dos procesos paralelos: la Iniciativa Ufungamano y el Grupo Parlamentario.

La Iniciativa Ufungamano y el Grupo Parlamentario

La Iniciativa Ufungamano comenzó el proceso con una reunión organizada por líderes religiosos a la cual fueron invitados todos los 54 grupos interesados nombrados en la Ley de Revisión. La reunión fue celebrada en la Casa Ufungamano, de allí el nombre. A continuación de esta reunión, se formó un Consejo Directivo para encabezar lo que luego se llamó "un proceso de revisión constitucional impulsado por el pueblo" para distinguirlo del "proceso de revisión parlamentario". El proceso Ufungamano juramentó a comisionados y comenzó a recoger las opiniones de la gente sobre la propuesta nueva constitución. Sin embargo, como la mayoría de los miembros de la iniciativa no eran electos por el pueblo, se dijo que su proceso carecía de mandato legal para hacer una nueva constitución. También se expresaron dudas sobre cómo una constitución redactada por este equipo que está fuera del parlamento sería hecha efectiva en el marco de la ley existente.

El Parlamento, por su parte, también estableció un Comité Parlamentario Selecto para Revisar la Ley de Revisión de la Constitución de Kenia y propuso algunas enmiendas para comenzar de una vez con el atascado proceso. También permitió al parlamento guiar el proceso. Después de la a probación del informe del Comité Parlamentario Selecto se redactó una ley, se debatió y se promulgó. Se nombró una comisión de 15 personas presidida por el Prof. Pal Yash Ghai, un miembro del Grupo de Derechos Minoritarios. Después de algún desacuerdo, los dos grupos finalmente se juntaron a comienzos de 2001 y se pusieron de acuerdo en los principios básicos de la Ley de Revisión Constitucional. Se dice que el proceso de revisión constitucional está ahora en curso y podría ser finalizado antes de las próximas elecciones generales dentro de dos años.

Áreas importantes de la Constitución

Conforme a la Ley de Revisión Constitucional, las principales áreas a ser examinadas por la comisión de revisión son las siguientes:

La Composición y funciones de los organismos del estado; formas federales y unitarias de gobierno; organismos constitucionales existentes; buen ejercicio de la autoridad y derechos humanos; el sistema electoral; el sistema judicial; el gobierno local; derechos de propiedad y territoriales; finanzas públicas; ciudadanía; obstáculos socioculturales; los derechos del niño; sucesión al cargo; confección e implementación de tratados; principios directores de las políticas estatales; y cualquier otro asunto relacionado con los anteriormente mencionados. Algunas de estas áreas tienen mucha importancia para la vida de cualquier ciudadano e incluso para los pueblos indígenas marginados, como se analizará más adelante.

La ***composición y funciones de los organismos del estado*** es esencialmente la separación de poderes de las tres ramas del gobierno –ejecutivo, legislativo y judicial- para permitir un equilibrio de poder y controlar los excesos de cada uno. La presente constitución otorgó al poder ejecutivo más poder del necesario a expensas de las otras dos ramas. No hay duda que un proceso que perfeccione los organismos del estado será beneficioso para todos los ciudadanos.

La opción entre una ***forma de gobierno federal o unitaria*** es un tema que dicotomiza las opiniones, entre las comunidades mayoritarias y más dominantes de un lado y las comunidades minoritarias y más marginadas del otro. La actual constitución de Kenia prevé una forma unitaria de gobierno donde el poder está centralizado y el gobierno ejercita su poder directamente en todo el país, a nivel provincial, de distrito, local y sublocal. Como Kenia siempre ha operado bajo una forma unitaria de gobierno, las comunidades que no sienten estar adecuadamente representadas en todos los niveles administrativos han llegado a la conclusión de que el problema es la centralización del poder. Por lo tanto, proponen un cambio que permita la devolución del poder a los niveles regionales y de distrito. De esta forma, tienen la esperanza de ejercer alguna autonomía en el manejo y control de sus propios asuntos y recursos, particularmente la tierra.

Pero la discusión de un sistema federal de gobierno en Kenia evoca sentimientos de temor y malestar entre las comunidades mayoritarias y más dominantes por razones muy específicas. Aunque el federalismo existe en muchas partes del mundo –los EE.UU., Alemania y Etiopía son ejemplos frecuentemente citados- no siempre es claro qué forma asumiría en Kenia, aunque el sistema conocido como *Majimbo* (de *jimbo* o región) había sido el pilar del principal partido de oposición, la Unión Democrática Africana de Kenia (KADU) en los años 60 pero fue derrotado por el partido gobernante Unión Nacional Africana de Kenia (KANU).

El tipo de sistema *majimbo* estaba contenido en la constitución que existía en la independencia. En esa constitución, el país estaba dividido en siete regiones autónomas o *jimbos* a lo largo de las líneas de los actuales límites provinciales. Cada jimbo tenía su propio parlamento, poder judicial y poder ejecutivo, mientras que el gobierno federal se encargaba de asuntos relativos a la defensa, la política exterior, el comercio exterior y cualquier otro contacto externo.

El mayor temor sobre el sistema *majimbo* surge de la interpretación adjunta al tipo de federalismo que podría ser considerado. De acuerdo a una interpretación, las regiones podrían desear ser étnicamente puras, lo cual significa que otros grupos étnicos que no fueran indígenas de la región en particular podrían ser expulsados. Esta expulsión ocasionaría la violencia étnica. Por esta razón, cualquier posibilidad de introducir la forma *majimbo* de gobierno es proclive a ser rechazada por las comunidades dominantes y bienvenida por las comunidades indígenas marginadas que se sienten abrumadas por las miríadas de migrantes que acuden a sus áreas y se apoderan de los recursos que les pertenecen por derecho.

Dada la historia de Kenia de tensiones étnicas e individuos en el poder que usan sus posiciones para beneficiar a sus propias comunidades a expensas del resto, estas reacciones no son sorprendentes. Por cierto, dado el enorme poder del ejecutivo, el gobierno ha asentado unilateralmente a gente en tierras pertenecientes a las comunidades más débiles sin ninguna forma de consulta ni compensación, pero nunca viceversa. A veces, esto ha resultado en el ataque o despojo de migrantes y ha culminado en choques étnicos. Enoosupukia, Mt. Elgon y Likoni son áreas donde se ha informado de conflictos étnicos a comienzos y mediados de los años '90 y todavía plantean una seria amenaza en otras partes del país.

Otra razón por la que la forma de gobierno crea diferencias de opiniones es que una forma unitaria de gobierno es también percibida como tendiente a la uniformidad de maneras de hacer las cosas: una lengua, una cultura, una forma de estructuras para todos, etc. Esto es percibido como diametralmente opuesto a un sistema que permite alguna diversidad, un elemento con el cual la mayoría de las comunidades indígenas marginadas se sienten relacionadas debido al valor fundamental que le adjudican a sus ricos sistemas sociopolíticos y económicos, todavía funcionales. Como consecuencia del colonialismo europeo y la subsiguiente recolonización por parte de las comunidades más dominantes, los sistemas indígenas están amenazados de extinción y si hay probabilidad de que un sistema federal sea más sensible a esos sentimientos, entonces promete ser una mejor opción para esas comunidades. Debido a estas razones, este punto particular de la constitución seguirá siendo un tema polémico y que muchos pueblos indígenas siempre seguirán de cerca ya que el resultado es proclive a afectar sus vidas de una forma u otra.

Organismos constitucionales existentes, buen ejercicio de la autoridad y derechos humanos es otra área que puede llegar a ser universalmente beneficiosa porque se centra en elementos esenciales de una sociedad democrática: transparencia, responsabilidad, compromiso con el imperio de la ley y la observancia de los derechos humanos. Se espera que la propuesta revisión constitucional contenga una fuerte Declaración de Derechos y previsiones que confirmen el compromiso del país con los principios básicos de la democracia, libertades fundamentales y protección de los derechos humanos.

Además del proceso de revisión constitucional que ha tendido a dominar buena parte de los últimos dos años, otro acontecimiento de naturaleza nacional es la creación de una serie de comisiones para tratar temas importantes de interés público. Una es la Comisión Akiwumi, que examinará los choques étnicos y la otra es la Comisión Njonjo que se ocupará de asuntos relativos a la tierra.

La Comisión Akiwumi

Hay muy poco para escribir sobre la Comisión Akiwumi porque, aunque recibió mandato para examinar las causas de los choques éticos y hacer recomendaciones sobre las acciones a tomar, ya hace dos años que esta comisión finalizó la tarea, pero los resultados todavía no han sido hechos públicos. Las conclusiones de la comisión serían muy importantes para la comprensión de las causas de los choques étnicos de manera de poder buscar medios sustentables de mitigarlas y controlarlas.

La Comisión de Tierra Njonjo

Informes no confirmados pero plausibles dicen que la Comisión de Tierra Njonjo fue formada para dar la impresión de que se está haciendo algo con respecto a las numerosas transacciones irregulares de tierra en el país. Un caso que llegó a los titulares es el famoso Caso Loodoariak/ Mosiro, en el cual la tierra fue demarcada en los papeles y se emitieron títulos fraudulentos a funcionarios del Ministerio de Tierras y otros, sin el conocimiento de la comunidad indígena *maasai* que reside corrientemente allí. Como la tierra era de "primer registro", de acuerdo a las Leyes de Kenia no podía, aparentemente, ser objetada frente a la justicia. Se tuvo que aprobar otra ley para corregir la injusticia.

Con la ayuda de la organización "Survival International", se redactó una nueva Ley y se hizo "lobby" para que fuera aprobada. Fue publicada en la Gaceta Oficial de Kenia y discutida en el Gabinete. Pero no llegó más lejos. Se dijo que altos funcionarios gubernamentales, junto con sus parientes y amigos perderían tierra ilegalmente adquirida. El próximo punto fue el establecimiento de la Comisión de Tierra Njonjo con un mandato para investigar y presentar soluciones para las leyes de tierra que necesitaban ser enmendadas; informar sobre tierra que fue ilegalmente enajenada y sugerir soluciones para la devolución de esas tierras.

Se suponía que la comisión presentaría un informe sobre el progreso de su trabajo a comienzos de este año, pero todavía está recogiendo opiniones del público. Pasará mucho tiempo antes de que el informe sea finalizado y hecho público, si es que lo hace, aunque está registrado que el presidente prometió que será hecho. Muchas críticas apuntan hacia el hecho de que la comisión puede no ser completamente independiente y que como hay muchas personas con altos cargos cuyos intereses serían afectados, es posible que el informe de la Comisión jamás vea la luz del día. Esto sería algo que iría en detrimento de la paz en las áreas afectadas del país. Los habitantes de Loodoariak y Mosiro ya han atacado y expulsado a personas que tratan de construir estructuras en la tierra alegando que tienen títulos. Y a pesar de la existencia de reglamentaciones muy claras que regulan las condiciones para otorgar préstamos, los bancos permitieron la hipoteca de esos títulos antes de que se pudiera verificar si la tierra existía realmente y si era viable para los propósitos para la cual fue hipotecada. Esto es también ilegal. Los pueblos indígenas marginados son principalmente los más afectados por el resultado del informe Njonjo.

La sequía y sus efectos

Durante los últimos dos años, Kenia experimentó una sequía muy seria que resultó en la muerte de ganado y de seres humanos. Se informó oficialmente que 3 millones de personas, principalmente pastores, han quedado totalmente indigentes. Como la fauna también murió en grandes cantidades, los cazadores-recolectores también fueron afectados. Algunas comunidades agricultoras, que usualmente gozan de seguridad alimentaria tampoco se salvaron. Se informó por primera vez de la sequía en el norte de Kenia y luego se extendió al sur. Los *samburu, borana, turkana, laikipia maasai, rendille pokot, somalíes* y otros se trasladaron al sur en busca de pasturas. Los pastores del sur se trasladaron a Nairobi y partes del norte de Tanzania, habiendo negociado el acceso con las comunidades del lugar. La movilización fue tan grande que después de la sequía el gobierno de Kenia agradeció al gobierno de Tanzania por permitir a los maasai de Kenia pastorear su ganado durante una de las peores sequías. Aunque se envió una alerta relativamente temprano, no se hizo nada al respecto hasta mucho después de que las personas habían comenzado a morir de hambre. Entonces el Programa Mundial para la Alimentación y otras agencias de ayuda comenzaron a enviar raciones de maíz a las comunidades afectadas.

Mientras tanto, para asegurar la supervivencia de algunos rebaños, el ganado tuvo que ser trasladado a casi todas partes en busca de establecimientos de pastura privados, parques nacionales, reservas forestales, sitios de recreación en la ciudad e incluso al complejo de la Casa de Gobierno en Nairobi. El movimiento de ganado creó conflictos, algunos reales otros imaginarios. El conflicto real fue cuando se informó que el ganado había destruido algunos cultivos de los cuales dependen las comunidades agrícolas.

Pero el conflicto imaginario se dio cuando entraron a enormes establecimientos agro-ganaderos privados con apenas algo de ganado y en reservas forestales y Parques Nacionales mientras que duraba la sequía. Los ambientalistas se quejaron amargamente sobre la destrucción de los bosques por el ganado y los agricultores pidieron al gobierno que expulsara el ganado de los centros urbanos.

La sequía puso en primer plano la intensidad de los prejuicios contra los pastores y sus rebaños, tanto a nivel local, cuando se cortó el pasaje del ganado, como a nivel nacional. Frente a tanta desesperación, el gobierno, que usualmente no simpatiza mucho con el uso de reservas forestales y Parques Nacionales, pareció ser bastante comprensivo en esta situación desesperada. Incluso anunció la inminente apertura de la Comisión de Carnes de Kenia como una medida de rescate para asistir a los pastores a comercializar su hambriento ganado, un hecho imposible dado el hecho de que el establecimiento había estado cerrado durante tanto tiempo que la maquinaria estaba herrumbrada. Sin embargo, dio algunas falsas esperanzas a los pastores.

El ganado que fue trasladado a los bosques pereció en grandes cantidades de enfermedades y malas condiciones del agua. Como resultado de todo lo anterior, elevados porcentajes de pastores quedaron con muy poco ganado, o ninguno, y son totalmente dependientes de la ayuda alimenticia. Después de las lluvias, aunque algunas comunidades agrícolas han recibido semillas para recomenzar una subsistencia sustentable, pocos pastores han recibido algo. Y de cualquier manera, sus áreas son demasiado áridas para cultivar. Lo que necesitan son "semillas" en forma de ganado joven para facilitar la reposición del ganado y permitirles dejar de depender de la ayuda alimenticia.

Procesos locales

Los dos últimos años han presenciado la desaparición del Foro Pastoralista de Kenia pero también el nacimiento de muchas pequeñas iniciativas indígenas y también consorcios y redes particulares más amplias en las comunidades. Los *borana* iniciaron el Movimiento para el Fortalecimiento de Iniciativas Locales (MELI) y los *samburu* iniciaron Conciencia de la Mitigación de la Pobreza y Nutrición (PARAN), incorporando a muchas organizaciones de base comunitaria (CBOs). Además de numerosas asociaciones pequeñas, los maasai también iniciaron el Consejo Pastoralista Maa que juntará a todos los maa-parlantes, incluyendo a los *samburu, ichamus, ilaikipiak* e *ilparakuyo* y otros, por encima de las divisiones políticas. Por su parte, los *pokot* han desarrollado TOMWO en una red regional más allá de las fronteras y han logrado hacer participar a un número importante de pokot. Aunque estas iniciativas pueden ser obstruidas por problemas de comunicación dada la vastedad de las áreas y otros factores, su existencia refleja la conciencia e interés en autodeterminar su futuro en el contexto de una seria negligencia y explotación. Las iniciativas también reducirían la duplicación de esfuerzos, facilitando compartir información y experiencias y, por ende, una búsqueda más fácil de soluciones posibles a problemas comunes.

La campaña para la protección de los derechos del pueblo *ogiek* ha ganado fuerza durante 2000 y 2001. El pueblo indígena ogiek está constituido por cazadores-recolectores que viven y dependen de los bosques del acantilado Mau. El área ha sido declarada área protegida para el manejo de vertientes por las autoridades kenianas, sin consideración de los derechos consuetudinarios territoriales y cazadores-recolectores de los ogiek. Al mismo tiempo, las autoridades del gobierno keniano han hecho muy poco para detener la invasión y la explotación forestal, han adjudicado tierras del bosque Mau a extraños y trataron de expulsar a los ogiek. Los ogiek llevaron el asunto a la justicia y en 1997, la Alta Corte declaró un interdicto sobre cualquier adjudicación futura de tierra hasta que la disputa sea resuelta. A pesar de este interdicto los ogiek sufren un continuo hostigamiento y amenazas de evicción, siendo la última el anuncio del gobierno de que 47.000 acres del Bosque Mau serían desregistrados y, por ende, estarían disponibles para el asentamiento de extraños. Los ogiek tienen dos casos judiciales pendientes.

Temas de la mujer

Ha habido una serie de acontecimientos interesantes en los años recientes que pueden tener efectos sobre la situación de las mujeres. La conferencia Pequín + Cinco, que tuvo lugar en Nueva York, ejerció presión para la aprobación de una ley para instituir la Acción Afirmativa en la legislación de Kenia. La discusión llegó al parlamento pero todavía tiene que ser finalizada.

Mientras tanto, la elección de la primer mujer presidente de la Sociedad Legal de Kenia fue un acontecimiento histórico. Hay mucho entusiasmo entre las mujeres, quienes esperan que los temas de la mujer sean mejor articulados. La nueva presidenta, Raychelle Omano, indica que una de sus prioridades será la educación legal.

Hacia el fin del año 2000, una organización de mujeres maasai conocida como Reto organizó una noche Cultural Maasai que reunió a todas las personas de habla maa de Kenia y Tanzania. El propósito era recaudar fondos para establecer una galería y un centro de recursos para el arte maasai; establecer un local para celebrar discusiones y deliberaciones sobre temas de interés común con el propósito de buscar soluciones.

El acontecimiento se destacó por canciones y danza, poesía, juegos, dramatización sobre temas de interés y platos típicos. Aquellas personas que asistieron reconocieron que el evento fue histórico ya que no se había realizado nada así antes y que debería realizarse anualmente. Aunque el evento duró media noche, algunas personas sugirieron que se debía adjudicar más tiempo la próxima vez y que cada evento debería encarar un tema particular. ¡Uno o dos hombres en espíritu de competencia expresaron consternación ante el hecho de que las mujeres estaban siendo mejores que los hombres!

TANZANIA

Una visión general de los pueblos indígenas de Tanzania

Los pueblos indígenas de Tanzania, tal como se analizan aquí, son las comunidades cazadoras-recolectoras *hadzabe* y *ndorobo*, junto con los pastores *barbaig* y *maasai*[1]. Este resumen analiza temas de interés fundamental para los pueblos indígenas de Tanzania durante los dos últimos años, es decir, 1999 y 2000.

Cazadores y recolectores hadzabe y ndorobo

Los hadzabe son descendientes de la raza bushmanoide y, hasta hace poco, eran conocidos en Tanzania como *kangeju, kindiga* o *tindiga*. Se cree que el nombre tindiga[2] fue inventado por los *nysanzu*, una comunidad vecina a los hadzabe. Estos últimos años, ellos han rechazado estos nombres en favor de *hadza* (pl. *hadzabe*) que, en su lengua, significa una persona.

Se piensa frecuentemente que los hadzabe están emparentados con los *sandawe* de Dodoma porque ambos pueblos hacen chasquidos con la lengua al hablar. Los hadzabe tienen una identidad tribal distinta y tienen muy poco en común con sus vecinos. Viven en las tierras semiáridas que rodean al lago Eyasi en el norte de Tanzania, donde ocupan un área de unos 25.000 kilómetros cuadrados que atraviesa los Distritos de Mbulu, Iramba y Meatu, en las regiones de Arusha, Singida y Shinyanga. Hace unos cincuenta años, los hadzabe ucupaban el doble de su actual territorio, el cual ha sido invadido desde entonces por los *iraqw, nyisanzu, sukima, barbaig* y otros pueblos.

Los ndorobo[3] son vecinos de los maasai en los distritos de Kiteto, Simanjiro y Ngorongoro de la región de Arusha. Constituyen una pequeña minoría en la región y en el distrito Kiteto viven en las siguientes aldeas: Amei, Loolera, Kilimoto, Palango, Iltirkishi, Enkusero, Namelok, Napilukunya, Isinya, Kitwai y Nkapapa.

Aunque ambos grupos son básicamente cazadores, también recogen moras silvestres, tubérculos, raíces y miel, que anteriormente constituían un 80% de su suministro alimenticio, particularmente durante la estación seca. Sin embargo, en años recientes, la inseguridad alimenticia se ha convertido en un problema recurrente que afecta a los cazadores-recolectores y, en ocasiones, el gobierno ha suministrado ayuda alimenticia, aunque generalmente en momentos equivocados.

En años recientes, algunos programas de desarrollo gubernamentales han intentado convertir a los cazadores-recolectores en agricultores y pequeños ganaderos. Los hadzabe han comenzado el cultivo del mijo, maíz, garbanzo y, en menor grado, algodón en Munguli, Mongowa-Mono y Yaeda

Chini, y también otros cultivos como el maíz, el mijo y el cacahuete. El gobierno suministró a las aldeas arados y algún ganado, pero el ganado fue robado y los arados tuvieron que ser transferidos a la aldea vecina de Sukuma, Paji, donde no son usados. Además, los cultivos introducidos son considerados extraños por los cazadores-recolectores, quienes preferirían cultivos como la cassava, patatas, etc., que requieren menor atención y soportan mucho mejor la sequía.

La cría de ganado está lentamente ganando aceptación entre los cazadores. Como estrategia para manejarse mejor, algunos de los cazadores también comenzaron a criar pollos pero sólo la joven generación consume pollos y huevos. En general, los cazadores-recolectores piensan que la agricultura es una pérdida de tiempo y frecuentemente recurren a sus medios tradicionales de obtener alimentos.

Las políticas de conservación también han constreñido el acceso de los cazadores-recolectores a sus fuentes de sustento. La caza y la recolección de moras silvestres, que eran su medio de subsistencia, se convirtieron en restrictivas, creando así incertidumbre y una perpetua inseguridad alimentaria.

Pastores: los pueblos barbaig y maasai

Los *barbaig* son parte del grupo *datoga* que está integrado por los *buradiga, bisiyeda, gisamjanga, bajuta, gidand'odiga, biyeanjida, darorajega* y barbaig. Mientras que la rama gisamjanga de los datoga ha sido asimilado por los *iraqwi*, los biyeanjida se integraron a los *nyaturu*.

Los barbaig se encuentran principalmente en las regiones de Arusha y Singida a lo largo del Gran Valle Oriental Rift, en los Distritos de Babati, Mbulu, Hanang, Singida, Manyono e Iramba. La mayor parte de los barbaig están actualmente concentrados en el Distrito de Hanang, al pie de la montaña Hanang. Acostumbran pasar con su ganado por las fronteras de las regiones de Arusha y Singida y, en años recientes, a continuación de la enajenación de su territorio tradicional de Hanang, también han comenzado a migrar a Dodoma, Morogoro y Shinyanga.

Los maasai[1] de Tanzania están divididos en segmentos, el grupo principal es el que se refiere usualmente como *maasai* y vive en cuatro distritos de la región de Arusha: Monduli, Simanjiro, Kiteto y Ngorongoro. El otro segmento está constituido por los *ilparakuyo* (a veces llamados *kwavi*) y viven en Tanga y Morogoro y algunos se han trasladado a Iringa y Mbeya.

Los pastores y la enajenación de recursos

Todos los pastores se encuentran bajo la presión proveniente de diferentes usos de la tierra. Los barbaig han perdido sus mejores tierras a manos del importante proyecto de trigo implementado por la Corporación Nacional de Alimentos (NAFCO), que fue financiada por la Agencia Internacional para el Desarrollo de Canadá (CIDA). Esto ha originado una seria escasez de tierra causando, por ende, conflictos perpetuos.

Similarmente, los maasai también han perdido recursos fundamentales en aras de la conservación de la fauna[2], la agricultura a pequeña y gran escala, compañías mineras y el desarrollo infraestructural y, por lo tanto, han surgido serios conflictos sobre estos recursos perdidos.

El desarrollo en el contexto nacional

Los pueblos indígenas viven en un medio ambiente que es influido por los desarrollos nacionales y regionales. Los siguientes son algunos de los puntos destacables de los importantes desarrollos del país, que tienen una influencia directa o indirecta sobre los medios de subsistencia de los pueblos indígenas.

Programas de Ajuste Estructural (SAPS) y su impacto sobre los pueblos indígenas

Durante los pasados dos años, Tanzania continuó sintiendo el impacto de la implementación de Programas de Ajuste Estructural (SAPs). Los objetivos específicos de los programas de ajuste que Tanzania firmó con el Fondo Monetario Internacional (FMI) incluyen la detención del decaimiento de la economía, la corrección de los desequilibrios en las finanzas externas, la reducción del déficit presupuestario, el aumento de la producción de alimentos y cultivos de exportación, la atracción de inversiones y recursos externos, y el establecimiento de instrumentos para el uso eficiente de los recursos.

Aunque virtualmente todos los tanzanianos han sentido el impacto de los SAPs, los sectores más afectados de la población han sido los pueblos indígenas, quienes están marginados. A continuación de la privatización de los servicios veterinarios, los precios de las medicinas para el ganado han aumentado más allá del alcance de la mayoría de los pastores. La falta de infraestructura y facilidades de comercialización dificultó que los pequeños ganaderos accedieran a las medicinas veterinarias. Esta combinación ha resultado en el aumento de las enfermedades del ganado y, por ende, en pérdidas de ganado.

La liberalización económica ha tenido sus efectos sobre el pastoralismo. Las crecientes tendencias hacia la utilización de productos forestales, a la extracción mineral, la quema de carbón y la expansión de áreas de producción de monocultivos, han tenido un impacto negativo sobre la producción pastoril. Han tenido como resultado una pérdida de áreas de pastoreo y la enajenación de las fuentes permanentes de agua. Muchos bloques de caza y áreas de manejo de la fauna han aumentado la competencia sobre los recursos naturales que son fundamentales para el pastoralismo.

La prohibición de la caza de subsistencia también afectó negativamente a las comunidades cazadoras-recolectoras, ya que su subsistencia depende de la caza de animales salvajes y la recolección de moras. Aunque a los cazadores se les dio una Licencia Presidencial que les permite cazar sin "pagar derechos", las dificultades para obtener la licencia condujeron a restricciones en el acceso a la caza.

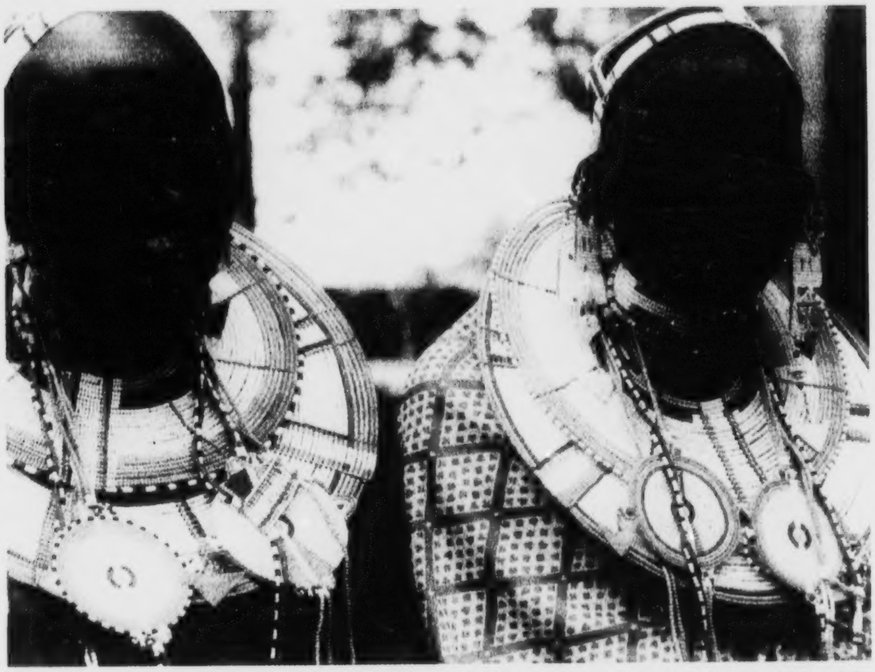
La Nueva Política de Tierras y la Ley de Tierras de 1999

En 1995, Tanzania formuló una Política Nacional de Tierras, la cual reafirma el legado colonial que declaró a todas las tierras de Tanzania como públicas y de propiedad de la presidencia. En febrero de 1999, la Asamblea Nacional promulgó una nueva ley de tierras, la Ley de Tierras y la Ley de tierras Aldeanas, 1999.

También debido a la liberalización económica, la tierra tiene ahora un valor de mercado y se da prioridad a los inversores sobre los habitantes locales. En contra de las recomendaciones realizadas por la Investigación sobre Asuntos referentes a la Tierra de la Comisión Presidencial, que fue presidida por el Profesor Issa Shivji, los funcionarios del Ministerio de Tierras todavía están a cargo de la administración de la tierra.

La nueva ley pone énfasis en el uso óptimo de la tierra a expensas de la seguridad de tenencia de la tierra de los agricultores de subsistencia, pastores y cazadores-recolectores. Una combinación de factores, como el crecimiento de las poblaciones humanas, de ganado y animales salvajes, la expansión de la agricultura, la proliferación de centros periurbanos, nuevas formas de uso de los recursos naturales, aumentó las presiones sobre los recursos naturales y en Tanzania está surgiendo una nueva clase de pueblos indígenas sin tierra.

El desplazamiento de los regímenes indígenas de tenencia de recursos y la imposición de modelos extranjeros de derechos de propiedad, con tierras que pertenecen a la presidencia y son administradas por el ejecutivo, es decir, por funcionarios del Ministerio, son consideradas como las causas fundamentales de la enajenación de tierras y de la inseguridad de tenencia de los recursos en Tanzania.



Mujeres maasai. Ngorongoro, Tanzania. Foto: Frans Welman/WIA

Asentamiento Mongowamono Wahadzabe, Lago Eyasi, Tanzania. Foto: Frans Welman/WIA

BEST COPY AVAILABLE

Temas emergentes y su impacto sobre la subsistencia de los pueblos indígenas

Territorios cada vez más pequeños

Las comunidades indígenas pastoras y cazadoras-recolectoras de Tanzania han ocupado tradicionalmente áreas bien provistas de recursos naturales. Esos territorios eran adecuados en tamaño, y los parámetros ecológicos mediatizaban y sustentaban las fuentes de subsistencia que formaron el patrimonio de esas comunidades. Los sistemas de conocimiento indígena evolucionaron con el tiempo y los recursos naturales fueron utilizados y manejados en forma sustentable.

Con el transcurso de los años, la sistemática enajenación de recursos claves comenzó a tener como resultado una disminución de su base de recursos. La reducción de la base de recursos redujo las poblaciones de ganado de los pastores datoga y maasai. Para los cazadores-recolectores ndorobo y hadzabe, las políticas y reglamentaciones que rigen la caza han ilegalizado la caza de subsistencia. Además, los inmigrantes han agotado los recursos de la fauna y la degradación ambiental ha reducido significativamente la disponibilidad de moras silvestres, raíces y miel.

Enajenación de la tierra

La enajenación de la tierra perteneciente a los pueblos indígenas de Tanzania para la creación de áreas de protección de la fauna (los Parques Nacionales Tarangire, Manyara, Ngordoto y Serengeti así como también la creación del Área de Conservación Ngorongoro) y la enajenación de tierras barbaig para la agricultura comercial en gran escala, como las granjas de trigo NAFCO en Hanang, la agricultura a pequeña escala en el distrito Kiteto y la minería de piedras preciosas en Mererani y Simanjiro, han reducido la base de recursos de los pueblos indígenas, resultando en crecientes niveles de conflictos por el uso de la tierra.

Conflictos basados en los recursos

Los conflictos entre la fauna y las actividades humanas se originan en los enfoques históricos de los movimientos de conservación en la región. Las políticas oficiales y las actitudes relativas al manejo de la fauna en la región han tendido a poner énfasis en una actitud de hacer respetar la ley. Este método de conservación fue heredado de la época colonial, durante la cual los derechos de los pueblos que ocupaban los mismos territorios que los animales salvajes eran considerados como secundarios con respecto a los de la fauna. Conforme a esto, la capacitación en el manejo de parques siguió la misma tendencia, por la cual los intereses desarrollistas de los habitantes locales no eran tomados en consideración, favoreciendo a la fauna.

Matanzas de Kilosa

A comienzos de diciembre de 2000 (la noche del 8), estalló la violencia entre los pastores maasai y los agricultores en la aldea de Rudewa, división Buyuni en el distrito de Kilosa. Casi 31 personas, la mayoría agricultores, resultaron muertas y unas 20 heridas.

La naturaleza del conflicto está basada en los recursos, debido a formas incompatibles de uso de la tierra entre los pastores y la agricultura de cosecha. Los informes de los medios de difusión estaban claramente parcializados contra los pastores, quienes fueron retratados como "pastores andariegos que no tenían respeto por la propiedad de otras personas".

El incidente condujo a la suspensión de altos funcionarios del gobierno, el Comisionado del Distrito de Kilosa, Edith Tumbo y el O.C.D., Honoratha Chuwa. El Primer Ministro y el Inspector General de Policía, respectivamente, suspendieron a los dos funcionarios mientras pendía el establecimiento de una investigación. Luego fue establecida una comisión investigadora para averiguar las causas del conflicto y asesorar al gobierno.

Marginación múltiple, crecientes niveles de vulnerabilidad y pobreza

Los niveles de vulnerabilidad y pobreza están aumentando. La capacidad de los pueblos indígenas para manejar la incertidumbre ecológica y la extensión de los riesgos se ha reducido significativamente. Una de las consecuencias de la disminución de su base de recursos es la disminución de la movilidad de los rebaños y los cambios de las pautas de uso de los recursos. Esto, a su vez, condujo a la pérdida de ganado y a niveles crecientes de pobreza e inseguridad alimentaria. Hay muchos niveles de marginación.

La marginación económica es causada por una combinación de factores. La disminución de la base de recursos reduce significativamente la cantidad de ganado. Los pastores requieren áreas de pasturas grandes y ecológicamente variables que faciliten la movilidad estacional para una productividad óptima. La movilidad es necesaria para permitir regenerar los recursos de la pradera y para su uso óptimo. La restricción de los movimientos diarios y estacionales del ganado crea una forma de marginación económica.

La disminución de la base de recursos también reduce los recursos de la fauna y de los frutos silvestres de los cuales dependen los cazadores-recolectores. La falta de infraestructura también hace que las áreas ocupadas por pueblos indígenas sean menos accesibles. La infraestructura física, o falta o es inadecuada, y esto tiene un impacto negativo sobre la cobertura y calidad de los servicios sociales. Las facilidades sanitarias y el personal sanitario son escasos y están a mucha distancia los unos de los otros, igual que las facilidades educacionales.

Las pocas escuelas disponibles están mal equipadas y carecen de personal. Debido a estas malas condiciones, los alumnos de las comunidades indígenas llegan muy raramente a la escuela secundaria. La seria escasez de maestros, equipos y libros, limitan el acceso a la educación normal. Como resultado, los niveles de analfabetismo están en aumento y no hay profesionales en las comunidades. Esta carencia de profesionales propios en los campos de la educación, salud humana y animal, en el sistema judicial y la administración, priva a los pueblos indígenas de representación en los organismos de toma de decisiones. En general, la negación del progreso constituye una grave violación de los derechos humanos fundamentales.

La extracción de recursos naturales de las áreas indígenas beneficia mayormente a elementos externos y no se devuelva nada a esas áreas para el desarrollo de los pueblos indígenas y de sus áreas. Y esto constituye una negación del derecho a sus propios recursos. Como las prioridades del desarrollo son definidas en otras partes y no donde viven los pueblos indígenas, estos pueblos se encuentran cada vez más victimizados y marginados debido a la abundancia de recursos naturales valiosos disponibles en sus áreas.

En el caso de los pastores, las inadecuadas facilidades de comercialización constriñen las ventas de ganado, resultando en que los precios del ganado y de los productos ganaderos sean perpetuamente bajos. Esto redujo cada vez más el poder adquisitivo de los pastores barbaig y maasai, ubicándolos en una situación muy vulnerable.

La marginación cultural es resultado de muchos factores. La pérdida de recursos claves que constituían los derechos culturales básicos de los pueblos indígenas ha tenido un impacto negativo sobre las culturas de los pueblos indígenas. *Endoinyio oolmoruak* es un sitio sagrado especial, cuyo valor para la comunidad maasai ha sido constreñido por la pérdida de recursos claves.

También hay ceremonias rituales que ya no son observadas porque los pueblos indígenas no tienen capacidad adquisitiva para comprar el ganado necesario para realizar el ritual. A causa de las dificultades económicas los pueblos indígenas han vendido sistemáticamente sus valiosos objetos de arte por casi nada, resultando en la remoción de los artefactos indígenas de las comunidades para llevarlos a centros comerciales (tiendas de curiosidades, museos y otros centros turísticos). Algo de este arte es usado para decorar hoteles turísticos a los cuales a los pueblos indígenas no se les permite el acceso.

La promoción de las lenguas nacionales y de las culturas dominantes ha sido acompañada de la supresión sistemática de las lenguas y culturas indígenas, tanto que en los centros urbanos se está haciendo común que los niños cuyos padres trabajan en ciudades no hablen sus propias lenguas.

Un importante sector de la comunidad también es atraído hacia los centros urbanos en busca de empleo asalariado y esto no sólo niega a las comunidades indígenas una fuerza de trabajo muy necesitada sino que destruye la trama social que permitía la coherencia de las comunidades indígenas. Un ejemplo de esto es el caso de los *ilmurran,* quienes han sido empujados, debido a la pérdida de ganado, a trabajar como guardias de seguridad en centros urbanos porque, siendo analfabetos, estos son los únicos trabajos disponibles para ellos.

En el ámbito político, las cuatro comunidades indígenas de Tanzania han experimentado la pérdida de sus territorios indígenas y han sido empujadas a otras áreas. Ahora viven en más de 15 distritos administrativos, donde constituyen un pequeño porcentaje de la población de los mismos. Consecuentemente, han terminado siendo una minoría sin una adecuada representación política en diez distritos.

Iniciativas regionales, procesos y perspectivas futuras

Del 5 al 8 de junio de 2000, un total de 98 participantes de 48 ONGs, CBOs, suministradores de servicios e individuos interesados, asistieron a un taller que deliberó sobre cómo desarrollar una organización paraguas que pudiera actuar como portavoz de todos los pastores y cazadores-recolectores, un organismo que coordinara sus actividades y aumentara su trabajo de "lobby" y abogacía sobre temas de interés fundamental.

Se decidió el establecimiento de un foro TPHGC(*) para permitir a las organizaciones miembro compartir información y experiencias; facilitar la coordinación de iniciativas aumentando el desarrollo de las comunidades indígenas; forjar una representación efectiva de comunidades indígenas a diversos niveles – local, regional, nacional e internacional; promover el suministro de servicios a comunidades indígenas; facilitar los procesos para movilizar recursos para las comunidades indígenas; asegurar mecanismos de abogacía y lobby para aumentar la seguridad de la tenencia de recursos de las comunidades indígenas; crear capacidad para las organizaciones miembro y hacer trabajo de red.

Para poner esto en práctica, se estableció un equipo de trabajo con la tarea de realizar las antes mencionadas actividades. La composición del equipo de trabajo reflejó la diversidad de las comunidades indígenas que participaron en la reunión. Dos miembros del equipo eran de la comunidad maasai, uno de la comunidad parakuyo, dos de la comunidad barbaig, uno de la comunidad hadzabe y cuatro fueron seleccionados sobre la base de su experiencia profesional.

La organización "Investigación Comunitaria y Servicios de Desarrollo" (CORDS) fue elegida para servir como Secretariado interino. Hasta ahora, el equipo de trabajo ha preparado una constitución, ha esbozado un boletín informativo para informar a los interesados sobre los progresos realizados y ha estado recaudando fondos con el propósito de que los objetivos del

Consejo sean operativos, uno de los cuales es reunir a los interesados para una actualización y realizar una planificación estratégica para el Consejo.

Acontecimientos regionales

En enero de 1999 se celebró un taller organizado por PINGOS e IWGIA, en Arusha, Tanzania. El taller reunió a participantes indígenas de África Oriental, Central y del Sur. Uno de los logros del taller fue ayudar a los pueblos indígenas de la región a construir sus propias redes de trabajo. También brindó una vía para que las organizaciones de pueblos indígenas africanos se vinculen con la Comisión Africana para los Derechos Humanos y de los Pueblos.

Más tarde, ese mismo año, el Consejo Saami organizó un curso sobre Derechos Humanos y procesos de la ONU, en el cual participaron una serie de pueblos indígenas y organizaciones. El curso duró tres semanas y tuvo como resultado mayor conocimiento de los procesos de la ONU. Fue durante ese tiempo que se formó la Organización de Pueblos Indígenas de África (OIPA).

En junio de 2000, la Comisión de Derechos Humanos de la ONU organizó un taller, otra vez en Arusha, para reunir a pueblos indígenas y minorías para discutir el multiculturalismo.

Notas

[1] La discusión sobre otros grupos de Tanzania que pueden reclamar la identidad de pueblos indígenas está más allá del ámbito de este trabajo.

[2] Tindiga es usado por los nysanzyu para referirse a personas que viven en el monte "bush" y viven de la caza y la recolección.

[3] Ndorobo es una palabra maasai que significa alguien sin ganado y, por lo tanto, dependiente de la caza y de la recolección.

[4] Aunque los maasai se encuentran en Kenia y Tanzania, esta sección trata solamente del lado tanzaniano de la frontera.

[5] Algunas de las áreas protegidas sacadas a Maasailand incluyen a los Parques Nacionales de Serengeti, (Sifinget), Manyara, Tarangier, y Nkordoto. Aunque Ngorongoro se supone que es compartido entre los seres humanos y la fauna, la gente ha perdido claramente a expensas de la conservación.

* TPHGC: Consejo de Cazadores-Recolectores y Pastores de Tanzania

AFRICA CENTRAL

BEST COPY AVAILABLE

AFRICA CENTRAL

RWANDA

Como resultado de los sostenidos esfuerzos de abogacía de la ONG nacional de los *twa* de Rwanda "CAURWA" (Communauté des Autochtones Rwandais), la difícil situación de los twa y el hecho de que hasta ahora han sido casi invisibles para los que elaboran las políticas, está finalmente comenzando a ser reconocido por las autoridades rwandesas. En abril del año 2000, la recién establecida Comisión para la Unidad Nacional y la Reconciliación reconoció: *"La marginación del pueblo twa es un lado oscuro de nuestra sociedad ... ha sido olvidado sistemáticamente como si no existiera ... ellos tienen intereses y preocupaciones genuinos"*. La comisión recomendó realizar acciones afirmativas en favor de los twa en términos de educación y servicios de salud gratuitos. Consiguientemente, cuatro representantes comunitarios twa participaron en la Conferencia Nacional de la Comisión en el mes de octubre y hablaron enérgicamente a los participantes de la asamblea sobre su sentimiento de injusticia y exclusión de la sociedad rwandesa. La Conferencia recomendó en su Resolución 11 que se debería prestar atención especial a las mujeres, niños, jóvenes y al pueblo twa, y se deberían realizar esfuerzos para ayudar a que sus organismos adquieran la capacidad de participar en estructuras de toma de decisiones. Dos representantes de la juventud y dos de las mujeres han sido integrados al Parlamento pero, hasta ahora, no existe ninguna representación similar para los twa.

En julio, CURWA envió una carta abierta al Presidente Paul Kagame, exhortando al gobierno a involucrarlos más en los esfuerzos desarrollistas del país. La carta recibió cobertura nacional e internacional y destacó el hecho que en los cinco años desde que el Gobierno de Unidad Nacional asumió el poder, la situación de los twa no ha mejorado. Enajenados de sus tierras tradicionales sin compensación, continúan sufriendo pobreza, falta de educación, falta de cuidados básicos de la salud, aislamiento social y exclusión del ámbito de toma de decisiones.

En Kigali se celebró en el mes de noviembre una reunión de organizaciones indígenas centroafricanas para fortalecer el desarrollo regional de la Alianza Internacional de Pueblos Indígenas y Tribales de los Bosques Tropicales. Esto estimuló discusiones con ministerios rwandeses, ONGs y la prensa sobre el "indigenismo" en África, un concepto que es ampliamente resistido por los gobiernos africanos y que es particularmente sensible en Rwanda, dada la política gubernamental post-genocidio para desalentar la

BEST COPY AVAILABLE

identificación en términos de grupos étnicos. La reunión eligió puntos centrales nacionales para la Alianza Internacional en cada país, con el fin de fortalecer las comunicaciones entre grupos indígenas dentro de la región.

CAURWA y sus organizaciones miembro han sido activas a nivel local, dialogando con las autoridades locales para liberar tierra comunal para el uso de las familias twa, organizando proyectos de construcción de viviendas, proveyendo herramientas, materiales y ayuda a las comunidades twa, ayudando a los alumnos twa del nivel secundario y estableciendo una red de puntos centrales en prefecturas como vínculos entre las comunidades y CAURWA. La coordinación nacional entre las ONGs twa está en aumento pues cinco ONGs están colaborando ahora bajo los auspicios de CAURWA para realizar proyectos comunitarios. Una investigación exhaustiva de los prisioneros twa en todos los centros de detención de Ruanda, realizada por la "Association pour le Développement Global des Batwa de Rwanda (ADBR)", reveló que la mayoría de los 700 prisioneros twa no tenía expedientes, vestimentas, alimentación ni contacto con sus familias. Sin medios financieros o influencia, son incapaces de lograr que sus casos avancen. Sólo un puñado de twa ha sido juzgado hasta ahora. ADBR propone trabajar con abogados locales para llevar a la justicia los casos de aquellos twa que tienen expedientes. Se estima que 3.000 twa fueron encarcelados después del genocidio, lo que plantea la cuestión de qué sucedió con los restantes 2.300 individuos.

LA REPÚBLICA DEMOCRÁTICA DEL CONGO (RDC)

Los twa del este de la República Democrática del Congo siguen siendo afectados por el incesante conflicto entre Uganda y movimientos rebeldes apoyados por Rwanda, el ex-Ejército de Rwanda (FAR) y milicias rwandesas *interahamwe* (perpetradores del genocidio de Ruanda), milicias congoleñas *mai-mai* y fuerzas del gobierno de la RDC. Todas las facciones involucradas han perpetrado severas violaciones de derechos humanos. Queda por verse si el acuerdo de paz de Lusaka, negociado en agosto de 1999 entre todas las partes beligerantes, puede ser implementado luego del asesinato del Presidente Laurent Kabila, el 17 de enero de 2001 y la ascensión al poder de su hijo, Joseph Kabila.

No es fácil acceder a información detallada sobre el impacto del conflicto sobre los *twa, mbuti* y otros pueblos indígenas del este del Congo. Los intensos conflictos entre las tribus *hema* y *lendu*, en la región Ituri del nordeste de la RDC, exacerbados por luchas de poder dentro de las fuerzas rebeldes apoyadas por Uganda, han causado miles de muertes civiles y cientos de miles de desplazados. Los efectos de estos combates sobre los mbuti son desconocidos. En octubre de 2000, ACNUR informó que por primera vez, más de 100 *pigmeos* habían buscado refugio en Betou, en la República del Congo, huyendo de los combates entre el "Mouvement de libération du Congo" y fuerzas gubernamentales en el noroeste de la RDC. ACNUR consideró que la presencia de los pigmeos era alarmante, *"porque estas pequeñas comunidades son usualmente muy autosuficientes y reacias a abandonar sus áreas territoriales a menos que se enfrenten a dificultades extremas"*.

Los ataques de la milicia interahamwe, mai-mai y otros grupos armados en torno al Parque Nacional Kahuzi-Biega, en el sur de Kivu, causaron cada vez más terror a las poblaciones locales, incluyendo a comunidades twa, las cuales han sufrido arrestos arbitrarios, violaciones y pillaje de propiedad y animales. Cada una de las facciones guerreras considera a los twa como aliados del otro bando y entonces éstos caen como víctimas de cada ola sucesiva de milicias que pasa a través del bosque. Muchos twa abandonaron la selva y se trasladaron a aldeas cerca de Bukavu, ejerciendo presión sobre los limitados recursos de las ya pobres comunidades twa. Twa desplazados, completamente indigentes, llegaron a Bukavu, Goma y otros centros urbanos en busca de alimentos, abrigo y satisfacer sus necesidades básicas. Las agencias de ayuda no pueden llegar a las comunidades twa que todavía están en el bosque pero los twa dicen que incluso en áreas accesibles, frecuentemente no reciben una parte de la ayuda humanitaria porque la distribución es manipulada y desviada por otros grupos más poderosos.

A pesar de las continuas dificultades, las ONGs que trabajan para los twa continúan su trabajo con las comunidades en torno a Bukavu, desarrollando su agricultura y actividades educativas y de salud conjuntamente con comunidades pigmeas más alejadas. En la RDC ha surgido una serie de nuevas ONGs con el objetivo de apoyar a las comunidades pigmeas en educación, agricultura y cuidado de la salud. Esto indica un creciente interés en los temas pigmeos, aunque en algunos casos el incentivo es la contribución de los donantes. La mayoría de estas ONGs incluyen algunos individuos twa en su personal o entre sus asociados. El "Programme pour l'Intégration et le Développement des Pygmées du Kivu (PIDP)" comenzó un programa que responde a las necesidades de las mujeres twa y ha tomado contacto con agencias que trabajan con pigmeos en el norte de Kivu. PIDP está ayudando a estudiantes twa en sus estudios de desarrollo rural en Bukavu. Se está tomando acciones legales para enfrentarse a la expropiación de un campo cultivado por twa en Bishulishili. El principal problema que entorpece los esfuerzos para mejorar la situación de los twa es la carencia de tierra permanente para la agricultura y vivienda. La ONG con sede en Bukavu, CAMV (Centre d'Accompagnement des Ménages vulnérables et Autochtones minoritaires) inició la publicación de un boletín informativo trimestral "L'Echo des Pygmées" que informa sobre eventos locales y regionales.

Dos comunidades en torno al Parque Nacional Kahuzi-Biega siguen expresando su insatisfacción con las restricciones impuestas por el parque y su situación de carencia total de tierras. Las autoridades del parque, el Instituto Congoleño para la Conservación de la Naturaleza y Deutche Gesellschaft für Technishe Zuzammenarbeit GmbH (GTZ), obtuvieron ayuda alimenticia de agencias humanitarias para los guardias twa del parque. Los administradores del parque están elaborando aparentemente un plan para asistir a los twa en forma más efectiva.

Para celebrar el Día Internacional de los Pueblos Indígenas, PIDP organizó en agosto una conferencia de mujeres twa que representaban a comunidades locales del norte y sur de Kivu y Maniema. En noviembre de 2000 se celebró una segunda conferencia en Bukavu para discutir los derechos de las mujeres twa, los efectos de la guerra sobre ellas y su contribución a la restauración de la paz en la región. Reunió a mujeres indígenas de Rwanda, Burundi, la RDC y Kenia, así como a representantes comunitarios twa, autoridades locales de la RDC y ONGs. Es probable que la conferencia tenga como resultado el establecimiento de una red regional de mujeres twa.

BURUNDI

La última ola de violencia de Burundi comenzó en octubre de 1993, después del asesinato del presidente *hutu,* democráticamente electo, Melchior Ndadaye, por el ejército dominado por los *tutsi*. Desde entonces, los violentos conflictos entre diferentes facciones de élite hutu y tutsi que luchan por el poder político han asolado al país. El proceso de paz de Arusha, iniciado primero por el fallecido presidente de Tanzania, Julius Nyerere, y seguido luego por el ex presidente sudafricano, Nelson Mandela, atrajo más grupos a la mesa de negociaciones durante el año 2000 y aumentó las perspectivas de un acuerdo político. El 28 de agosto de 2000 todas las partes firmaron un acuerdo, excepto las dos principales facciones armadas rebeldes prohutu CNDD-FDD y PALIPEHUTU-FNL. El resultado fue que no se negoció ningún acuerdo de alto el fuego y todavía continúan los combates entre las facciones opuestas. Sigue existiendo la posibilidad de que el acuerdo de Arusha sea rechazado violentamente.

Los 30.000-40.000 twa de Burundi no estuvieron representados en las negociaciones de Arusha. El Acuerdo prevé una Asamblea Nacional con 100 diputados y un Senado con un representante hutu y uno tutsi por cada una de las 17 provincias. No obstante, la representación twa está limitada a tres twa en el Senado.

Se estima que 370.000 burundianos huyeron a países vecinos como resultado de la guerra civil, principalmente a Tanzania y unos 300.000 son desplazados internos o están reagrupados en campamentos muy precarios. Los restantes 5,7 millones de ciudadanos de Burundi siguen sufriendo la violencia y la erosión de la infraestructura del Estado, con el resultado de una extendida escasez de servicios sociales básicos, incluyendo el cuidado de la salud, educación, agua potable y saneamiento. Dos sequías consecutivas y el desplazamiento de agricultores de sus tierras causaron una seria inseguridad alimentaria y preocupaciones por el medio ambiente. Como ocurrió durante el conflicto de Rwanda, los twa de Burundi fueron víctimas tanto de los hutu como de los tutsi beligerantes y, siendo el sector más empobrecido de la sociedad, tienen menos recursos que les permitan sobrevivir a las arduas consecuencias del conflicto. Ellos sienten esto como una injusticia particular ya que no tienen nada que ver con la guerra.

En octubre se celebró una reunión para coordinar las actividades de las dos ONGs twa UNIPROBA (Unissons pour la Promotion des Batwa) y UCEDD (Union Chrétienne pour l'Education et le Développement des Déshérités) y una ONG que trabaja con los twa, APDB (Association pour la Paix et les Droits de l'Homme). Las tres ONGs acordaron dar prioridad a diferentes áreas del país y trabajar en temas de educación, adquisición de tierra, agricultura, generación de ingreso, vivienda, prisioneros y promoción de la cultura twa. UNIPROBA distribuyó materiales a agricultores twa y está ayudando a pescadores twa del Lago Tanganyka. A través de su Presidente, Sra. Libérate Nicayenze, miembro del parlamento, UNIPROBA está trabajando para lograr la adjudicación de tierras a comunidades twa. UCEDD está realizando trabajo de educación y alfabetización en dos comunidades twa en Gitega y en el 2000 organizó una reunión de mujeres twa para analizar sus problemas e identificar estrategias para fortalecerlas.

UGANDA

El establecimiento de los Bosques Bwindi y Mgahinga como parques nacionales en 1991 tuvo como resultado la forzada exclusión de unos dos mil twa del sudoeste de Uganda y la destrucción total de su rol forestal en la economía local. Se convirtieron en trabajadores sin tierra para agricultores locales. Algunos twa recibieron compensación, la mayoría no recibió nada. Mientras tanto, los agricultores, que han estado destruyendo el bosque y por eso se les reconoció derechos a la tierra, recibieron la mayor parte de la compensación disponible. Gran parte de la financiación de los parques proviene del Banco Mundial a través de la Fundación para el Medio Ambiente Global. Los loables esfuerzos de los responsables de los parques para ayudar a los twa expulsados han sido resistidos por agricultores locales quienes, al no reconocer la dependencia total de los twa de los recursos forestales, consideran la adjudicación de tierras y otras ayudas a los twa como favoritismo. Los twa carecen de medios de subsistencia alternativos – el acceso al bosque por razones de subsistencia y religiosas es ahora ilegal y riesgoso para ellos, y sólo dos twa están empleados en los parques.

Los proyectos de desarrollo comunitario, financiados por un fondo Fiduciario del Banco Mundial y apoyado por el Gobierno de Holanda, han sido muy lentos en entregar beneficios a los twa, a pesar de la presión holandesa.

Sin embargo, durante el último año, la situación de unos dos mil twa en el sudoeste de Uganda mejoró en cierta medida, aunque continúan experimentando discriminación y empobrecimiento, siendo excluidos de sus bosques por la fuerza. Los twa establecieron su propia ONG en febrero de 2000 (UOBDU – United Organisation for Batwa Development in Uganda) y han comenzado a recibir tierra como parte de la compensación por su exclusión de los bosques.

En diciembre de 1999, debido en parte a la presión holandesa, se compró 70 acres de tierra y se distribuyó entre 38 familias twa (menos del 10% de las familias sin tierra). En mayo de 2000, representantes de UOBDU participaron en un taller sobre la Política para los Pueblos Indígenas del Banco Mundial (ver más adelante en Abogacía en el Banco Mundial). Más tarde en 2000, se compraron unos 100 acres más de tierra, debido en parte a presión de los mismos twa quienes habían ganado confianza y conocimiento como resultado de los contactos realizados durante el taller sobre el Banco Mundial. Potencialmente, el 25% de los twa habrá recibido una pequeña, pero vital, cantidad de tierra que les otorga algún tipo de base de subsistencia, pero el 75% todavía es indigente y, en la práctica, casi ninguno ha recibido el derecho a entrar a sus bosques por razones de subsistencia o religiosas.

Es demasiado pronto para decir si estas acciones son demasiado pequeñas, demasiado tardías si pronto se estancarán o si el proceso de distribución de la tierra logrará ganar impulso. El proceso puede comenzar a cumplir con las necesidades twa si es acompañado por esfuerzos genuinamente participativos de las organizaciones conservacionistas y si los twa pueden obtener ventajas económicas reales de los bosques. Esto depende de la posibilidad del pueblo twa al acceso a los bosques con propósitos de uso sustentable y culturales: una promesa hecha desde su evicción y exclusión en 1991 pero que todavía no se ha materializado. Mientras tanto, los twa están, o muy asustados de entrar en los bosques (y los jóvenes están perdiendo toda oportunidad de conocerlos), o para aquellos que entran a sus bosques por razones religiosas o por razones de subsistencia, la consecuencia es frecuentemente una sentencia de tres meses de prisión. Por eso, es un asunto de preocupación urgente que los organismos conservacionistas pertinentes no hayan sido capaces de avanzar rápidamente en temas como el acceso de los twa al bosque o de sus derechos a los mismos. Si el diálogo con estos organismos no resuelve los temas del acceso al bosque, compensación y restitución, los twa están considerando actualmente una posible demanda legal contra la evicción de 1991 y su subsecuente exclusión de los bosques Mgahinga, Bwindi y Echuya.

CAMERUN

Las comunidades indígenas *bagyéli* del sudoeste de Camerún se verán enfrentadas pronto con las consecuencias ambientales y sociales de un oleoducto que pasará a través de sus territorios transportando petróleo de los campos petrolíferos de Doba, en Chad. El polémico proyecto del oleoducto Chad-Camerún, de un costo de US$3,5 mil millones, fue aprobado el 6 de junio de 2000 por el Banco Mundial, el cual apoya el proyecto con préstamos de US$240 millones[1].

Una investigación de aldeas bagyéli realizada en agosto de 2000 por la organización bagyéli CODEBABIK (ver más adelante en Abogacía en el Banco Mundial) destacó la situación marginada y vulnerable de este grupo indígena. Los aproximadamente 4.000 bagyéli (*bakola*) carecen de documentos de identidad cameruneses, nunca participan en las elecciones locales y no tienen ningún derecho a la tierra conforme a la legislación nacional o al derecho consuetudinario bantú. Viven principalmente de la caza y de la recolección, algo de agricultura y como trabajadores ocasionales en aldeas bantúes. No han sido bien informados sobre las implicaciones del proyecto del oleoducto para su futuro. El proyecto presenta riesgos reales de un creciente empobrecimiento y marginación del pueblo bagyéli.

Los trabajos de "lobby" en el Banco Mundial de los bagyéli y sus simpatizantes para resaltar los intereses de los pueblos indígenas afectados por el oleoducto significaron que el proyecto es objeto ahora de la atención pública internacional. La Dirección del Banco considera el proyecto como un caso que probará la capacidad del Grupo del Banco Mundial para reducir la pobreza y salvaguardar los derechos de los pueblos indígenas. Se han propuesto diversas medidas como un Grupo Asesor Independiente (IAG) que incluya a expertos sociales y en el desarrollo, que informe regularmente a la Dirección sobre el progreso de la implementación de este proyecto, y un Plan para Pueblos Indígenas. Pero queda por verse si el proyecto desafiará los problemas fundamentales de la discriminación e impotencia que enfrentan los bagyéli y les otorgará apropiados medios de subsistencia, derechos e igualdad.

Tres estudios de África Central sobre proyectos del Banco Mundial que afectan a pueblos indígenas

Autor	Proyecto financiado por el Banco Mundial	Conclusiones principales
CAURWA, Rwanda	Proyectos de silvicultura industrial y cría de ganado en el bosque Gishwati de Rwanda en los años 80.	Los proyectos causaron el reasentamiento involuntario de los impunyu twa del bosque de Gishwati y la pérdida de sus antiguos medios de subsistencia y cultura, de base forestal, dejando a los impunyu sin tierra y empobrecidos.
CODEBABIK y Planet Survey, Camerún	Implementación de consultas entre los bagyéli del preproyecto sobre el Proyecto de Oleoducto Chad-Camerún.	Las consultas no lograron informar adecuadamente a los bagyéli de las implicaciones del proyecto para su futuro, faltaban mecanismos para la efectiva participación de los bagyéli en la toma de decisiones y no existen agencias del Estado que apoyen activamente los intereses indígenas. La OD 4.20 no fue implementada correctamente.
UOBDU, Uganda y FPP, UK	Impactos del Fondo de Bosques Impenetrables Mgahinga y Bwindi sobre los batwa del S.O. de Uganda.	La implementación de las previsiones del Fondo para los twa, particularmente el nombramiento de un funcionario twa, compra de tierra compensatoria y proyectos de desarrollo comunitario ha sido lenta y poco entusiasta.

Eventos regionales

Conferencia sobre Ecosistemas Tropicales Húmedos de África Central (CEFDHAC)

Representantes twa de Ruanda, Burundi y de la RDC y un representante bagyéli de Camerún asistieron a la 3ª Conferencia sobre Ecosistemas Tropicales Húmedos de África Central (CEFDHAC), en Bujumbura, Burundi, en el mes de junio. CEFDHAC es un proceso interministerial orientado a coordinar acciones sobre bosques a través de los países centroafricanos. El objetivo de la conferencia era examinar temas de administración apropiada en las áreas boscosas de la Cuenca del Congo. A pesar del hecho de que el área cubierta por los países de CEFDHAC es el área habitada por los pueblos indígenas "pigmeos" de África, el CEFDHAC hace poco esfuerzo para involucrar a comunidades indígenas o dependientes de los bosques. Las recomendaciones de los participantes indígenas sobre una mayor participación de los pueblos indígenas en el manejo ambiental no lograron llegar al comunicado final, aunque fueron aprobadas por los delegados de la Conferencia.

Abogacía en el Banco Mundial

Los pueblos indígenas centroafricanos contribuyeron con sus aportes a una evaluación y revisión de la Directiva Operacional 4.20 del Banco Mundial para proyectos del Banco que afecten a pueblos indígenas, en un taller en Washington D.C., en mayo de 2000[2]. El taller comprendió ocho estudios, incluyendo tres de África Central (ver pág. anterior).

El taller permitió a los representantes indígenas realizar contactos útiles con personal del Banco y con indígenas de otras regiones del mundo. Los estudios de caso destacaron la necesidad de una participación más enérgica de los pueblos indígenas en proyectos financiados por el Banco, pronta acción para salvaguardar el uso indígena de tierras y recursos, mejor monitoreo de los proyectos, incluyendo aportes de los pueblos afectados y ONGs, y medidas para asegurar la correcta implementación de los proyectos del Banco Mundial, incluyendo medidas de implementación más rigurosa con los gobiernos prestatarios. Se espera que el proyecto revisado sobre política para los pueblos indígenas del Banco (OP 4.10) sea publicado en febrero de 2001.

Nuevas publicaciones

Vídeo: *People of Clay: The Twa of Rwanda.* La historia y la situación actual de los twa de Rwanda en el contexto del debate internacional sobre pueblos indígenas en África. Producido por CAURWA y Forest Peoples Programme.

Albert Kwokwo Barume. *Heading Towards Extinction? Indigenous Rights in Africa: The Case of the Twa of the Kahuzi-Biega National Park, Democratic Republic of Congo.* IWGIA y Forest Peoples Programme, 2001.

Jerome Lewis. *The Batwa Pygmies of the Great Lakes Region.* Minority Rights Group, R.U., 2000.

J. van den Berg & K. Biesbrouck. *The Social Dimension of Rainforest Management in Cameroon: issues for co-management.* Tropenbos-Cameroon Series 4, 2000.

Notas

[1] Por más detalles ver *¿Qué hay en el oleoducto para los bagyéli de Camerún?* Por el Programa para los Pueblos del Bosque, R.U. (Asuntos Indígenas Nº 3, julio-sept., 2000).

[2] El informe del taller *'Indigenous Peoples, Forests and the World Bank: Policies and Practice'* (organizado por el Programa para los Pueblos del Bosque y el Centro de Información del Banco) se puede conseguir a través del FPP.

AFRICA DEL SUR

AFRICA DEL SUR

NAMIBIA

Medidas drásticas y lentas

Ciertas decisiones y planes del Gobierno de Namibia en 2000 y 2001 ya han tenido, o tendrán, consecuencias críticas para ciertos grupos *san* del país. La decisión de permitir a las Fuerzas Armadas Angoleñas (FAA) combatir a los rebeldes de UNITA desde suelo namibiano tuvo consecuencias extremadamente destructivas para los san de las Regiones de Kavango y Caprivi. Desde que esta decisión fue tomada en 1999, los san de estas regiones han vivido en constante temor de pisar minas explosivas, ser atacados por soldados angoleños y ser hostigados por miembros de la Fuerza Especial de Campo de Namibia. Los arrestos arbitrarios de hombres *khwe* se han convertido en hechos frecuentes. En el año 2000, tal como pasó por primera vez a fines de 1988 después del levantamiento secesionista en el Caprivi, cientos de khwe huyeron para buscar refugio en la vecina Botswana, donde la mayoría se unió a los 1.600 san del campo de refugiados Dukwe, donde buscaron refugio a comienzos de 1999. Cinco de ocho aldeas bien establecidas de Caprivi Occidental están ahora desiertas.

El turismo en el norte de Namibia ha declinado dramáticamente debido a la inquietud que reina en el área, y esta declinación afectó drásticamente al campamento N//goabaca, propiedad de la comunidad khwe, en Caprivi Occidental: ningún turista visitó el campamento en el año 2000, por lo que no generó ningún ingreso. Algunas escuelas de Caprivi Occidental han permanecido cerradas desde fines de 1999 y muchos de los estudiantes afectados no tienen posibilidad de asistir a la escuela en otros lados. Temiendo por su seguridad, la mayoría de las mujeres y niños khwe ya no recolectan alimentos en el monte. Los agricultores khwe han cultivado sólo pequeñas partes de sus campos, si es que cultivaron algo, desde que el peligro de las minas se convirtió en una característica cotidiana. A comienzos de 2001, el Grupo de Trabajo sobre Minorías Indígenas del Sur de África (WIMSA) recibió informes de que la vasta mayoría de los 6.000 khwe de Caprivi Occidental no tendrán posibilidad de cosechar en la próxima estación, por lo que, si no se encuentra ninguna solución, pasarán hambre hasta la próxima estación de lluvias, dentro de 10 meses. Finalmente, después de muchas solicitudes, la "Ombudswoman" de Namibia prometió visitar el área en febrero de 2001 para evaluar la situación.

El plan del Gobierno de Namibia para reubicar el campo de refugiados Osire en el pequeño asentamiento de M´Katta, en el Distrito Tsumkwe Oeste (antes Bushmanland Occidental), es considerado contraproducente para los objetivos san de obtener un derecho de conservación que les otorgue el control de los recursos naturales en esa área. La inminente ubicación de casi 20.000 refugiados en esa tierra que actualmente sustenta a aproximadamente 4.500 *¡kung* va a tener como resultado la devastación del medio ambiente y una serie de problemas asociados. La organización internacional, Survival International, se puso en acción para impedir que esto suceda, lanzando una campaña a comienzos de 2001 para atraer la atención internacional sobre este tema. La respuesta hasta la fecha ha sido un bombardeo de cartas – *cientos*, en realidad – dirigidas al Ministerio de Asuntos Interiores de Namibia. Recientemente se formó un equipo de trabajo de 10 miembros para encarar este tema, el cual está compuesto fundamentalmente por san que representan a las Autoridades Tradicionales ¡kung y *ju/´hoan* del Distrito Tsumkwe Oeste y Este, respectivamente, así como la Conservación Nyae Nyae y WIMSA.

En el año 2000, la Asamblea Nacional de Namibia aprobó finalmente la tan esperada Ley de Reforma de Tierras Comunales, pero el Consejo Nacional (la segunda Casa del Parlamento) la rechazó. Las ONGs de Namibia también han criticado la ley sobre la base de que carece de un plan integrado de manejo de recursos naturales y de una aclaración sobre el estatus de las tierras comunales que ya han sido cercadas, siendo ésta una práctica ilegal y muy difundida en Namibia. La Ley de Reforma de Tierras Comunales es de particular interés para las autoridades tradicionales san, pues prevé su participación en los procedimientos de adjudicación de tierra y también reconoce derechos consuetudinarios o tradicionales relativos al acceso a tierras y recursos naturales. Cada una de las seis mayores comunidades san de Namibia tiene su propia autoridad tradicional y aunque todas han solicitado un reconocimiento oficial, hasta la fecha el Gobierno ha reconocido solamente a dos. Las cuatro autoridades restantes no serán reconocidas hasta que se hayan resuelto importantes disputas dentro de sus respectivas comunidades y entre éstas y el Gobierno.

Educación

Como en años anteriores, el Ministro de Educación Básica, Deportes y Cultura (MBESC), UNICEF y ONGs han continuado estableciendo los fundamentos para la implementación de los programas educacionales para los san.

En septiembre del año 2000 fue aprobado y endosado el proyecto de estrategia para el "Proyecto de Cooperación del Gobierno de Namibia y UNICEF, 2002-2005". Representantes san fueron invitados a participar en los grupos de trabajo temáticos que prepararon el proyecto estratégico, y a participar en el comité dirigente que lo aprobó. La invitación marcó un hito para los san: fue la primera oferta de representación directa en organismos ocupados en elaborar la estrategia de ese programa. El documento estratégico trata de la vulnerabilidad y marginación, y particularmente de los niños marginados del sistema educativo, la mayoría de los cuales provienen de las comunidades san u *ovahimba*. También imparte lecciones sobre protección especial contra la marginación, siendo una de esas protecciones "la financiación de acciones afirmativas [debería] incluir niños de grupos marginados en las áreas de la educación, cuidado de la salud y otros servicios".

El documento titulado "Opciones de Política Nacional para Niños Educacionalmente Marginados", publicado por el MBESC en el año 2000, concluye que "en la educación, los niños san son los más marginados del país" y, además, que "el desafío para el MBESC y para el país en general, es facilitar la educación y capacitación de niños san y al mismo tiempo, permitirles conservar sus raíces y cultura y sentirse orgullosos de los mismos". El documento apela por la aplicación de flexibilidad y creatividad para elaborar medidas apropiadas con una nueva visión para asegurar la participación de niños san en el sistema educacional normal.

La capacitación, la educación infantil y normal, así como la educación tradicional han seguido jugando un papel vital en las comunidades san durante el período tratado. Sin embargo, las escuelas de Namibia todavía registran un alto índice de abandono entre escolares san y una elevada cantidad de aquellos que terminaron el Grado 10 (el nivel mínimo obligatorio para un estudiante de Namibia) no aprobaron los exámenes de fin de año. Los pocos san que aprobaron los exámenes del Grado 12 con resultados suficientes para permitirles su admisión en las universidades del Sur de África, deben competir con miles de otros aplicantes por una plaza. Como ejemplo, ocho aplicantes san (uno de ellos mujer) que solicitaron estudiar en la Universidad de Educación de Windhoek en el año 2001, compitieron con otros 1.800 aplicantes por los 500 lugares disponibles. Tres de los ocho (incluyendo a la mujer) fueron invitados a presentarse a exámenes de la siguiente etapa y entrevistas y, finalmente, los tres fueron admitidos a la carrera de Maestro de Educación Básica.

Para aumentar la asistencia escolar y disminuir el creciente índice de abandono de los escolares san en la Región de Omaheke (en Namibia centro-oriental), UNICEF ha provisto de apoyo financiero y pericia al Fondo Omaheke San (OST), una pequeña organización paraguas que está al servicio de aproximadamente 6.000 san de la región. OST está identificando actualmente los problemas enfrentados por los escolares san en cada escuela, elaborando una base de datos sobre escuelas y estudiantes san de la región, haciendo seguimiento de los escolares que han abandonado los estudios y facilitando el diálogo entre las comunidades san y las escuelas. La Junta Administrativa de OST agradece esta iniciativa y algunos de sus miembros están comprometidos en el programa.

El programa educacional san que se lleva a cabo bajo los auspicios de WIMSA, con asistencia de otros colaboradores, entró en su segunda fase después de que se finalizara una investigación de un año sobre la situación educacional de los niños san en el sur de África, con la publicación de un informe titulado *"Torn Apart: San Childen as Change Agents en a Process of Acculturation"* (Desgarrados: niños san como agentes de cambio de un proceso de aculturación), elaborado por el trabajador del desarrollo, Willemien le Roux. La segunda fase implica retornar a los colaboradores del sur de África para identificar los esfuerzos, ya en marcha, que tratan de tomar en cuenta las recomendaciones del informe, los vacíos que todavía tienen que ser llenados y las personas mejor calificadas para llenarlos, y abrir los canales de comunicación entre los colaboradores. En noviembre del año 2000 se celebró un taller sobre educación para encarar los problemas específicos experimentados por los san de Botswana. El taller gozó de abundante asistencia y uno de los resultados fue el nombramiento de un grupo de "lobby" sobre Educación para Habitantes de Áreas Remotas (san) de Botswana, integrado por representantes del Ministerio de Educación de Botswana, organizaciones san y consejos locales. Una conferencia sobre educación san que tiene como anfitrión al Comité del Equipo de Trabajo Intersectorial de MSBESC sobre Niños Educacionalmente Marginados, a celebrarse en mayo de 2001 en Windhoek, marcará el fin de la segunda fase del programa regional educacional san.

Durante la última asamblea general de WIMSA, celebrada en Gaborone, Botswana, en octubre de 2000, los 47 delegados san de Botswana, Namibia y Sudáfrica decidieron formar un Comité Regional Educacional y de la Lengua San de 9 miembros, y un Comité Regional del Patrimonio y la Cultura San de seis miembros. Este será un organismo asesor del Centro Cultural y de Capacitación San situado cerca de Yzerfontein en el Cabo, Sudáfrica, y del Proyecto de la Colección Testimonial Oral San que opera bajo WIMSA y el Instituto Panos, una organización de información-divulgación con sede en Londres.

Las mujeres san

En noviembre de 2000 fue finalizado un informe titulado "Una perspectiva de género sobre la situación de los san en el Sur de África" y será publicado como parte de una serie de seis informes que transmiten las conclusiones de un estudio regional titulado *"Una evaluación regional de la situación de los san en el Sur de África"*, financiado por la Unión Europea y coordinado por el Centro de Asistencia Legal (LAC) de Windhoek. (Uno de los informes es una introducción general al estudio y los otros son específicos para cada país. Los cinco podrán ser distribuidos probablemente en abril de 2001). Con la autoría de Silke Felton y Heike Becker, del Centro para Ciencias

Aplicadas (CASS) de la Universidad de Namibia, el informe de género "investiga primero los aspectos de género de la marginación de los san de Sudáfrica, es decir, cómo afecta a los hombres y mujeres san en forma diferente ... [y] segundo [enfoca] las cambiantes relaciones de género dentro de las comunidades san del Sur de África". El informe analiza los asuntos relacionados con el género en temas como la división del trabajo, educación, salud, violencia y abuso, marcos políticos y dirección, y hace recomendaciones con respecto a cada tema.

Capacitación

Para muchos representantes san, la participación en la Asamblea General de WIMSA fue uno de los punto más destacados del año 2000. Quedó claramente establecido que en la última asamblea los delegados san habían desarrollado un sentido de unidad, propiedad y responsabilidad por WIMSA. En esa ocasión, se presentaron informes detallados y sumamente informativos sobre cada comunidad, se plantearon cuestiones críticas y se encontraron soluciones prácticas para algunos de los problemas discutidos. La discusión sobre derechos indígenas de propiedad intelectual evocó un interés particularmente intenso. La elección de una nueva Junta Administrativa de WIMSA contempló el cambio de los hombres y mujeres de mediana edad en favor de la joven generación con estudios. Los miembros de la nueva y vieja junta prometieron cooperar estrechamente.

En ausencia de representación san en prácticamente todas las estructuras de gobierno locales y nacionales –sólo un san ha sido electo hasta la fecha como el miembro número 72 de la Asamblea Nacional, el órgano legislativo más elevado de gobierno- se cree que los integrantes de la dirección tradicional san, que ha sido formalmente reconocida y sus miembros integran, por lo tanto, el Consejo de Líderes Tradicionales, son los más importantes representantes san de Namibia en el momento actual. WIMSA, CASS, y el Instituto para el Desarrollo de las Primeras Naciones, con sede en los EE.UU., han continuado destacando la capacidad de las autoridades tradicionales san, reconocidas y designadas, a través de talleres realizados con ese propósito. Durante el año 2000, se realizaron una serie de talleres en las comunidades para otorgar una oportunidad a los miembros comunitarios interesados en reflexionar sobre las tareas, responsabilidades y derechos de las autoridades tradicionales. A su solicitud, las comunidades recibieron apoyo mediante el proceso de establecimiento de organizaciones comunitarias.

La organización antes mencionada, OST, ya está fructificando. Esta organización comunitaria y sus administradores san han logrado el reconocimiento a nivel gubernamental dentro de la región, y las ONGs nacionales e internacionales han expresado interés en trabajar con ella. Los fondos provistos por varios donantes han hecho posible el establecimiento de algunos proyectos comunitarios. El desafío fundamental sigue siendo obtener el pleno reconocimiento y respeto de todos los grupos étnicos que residen en esta Región Omaheke.

Conclusiones

Tenemos la esperanza que los san, con la asistencia de la opinión internacional y del Grupo de Trabajo de las Naciones Unidas sobre Poblaciones Indígenas, sean capaces de influir al gobierno de Namibia para que revoque su plan de reasentar a casi 20.000 refugiados en el territorio de 4.500 san que necesitan sus recursos naturales para realizar sus planes sobre la proyectada Conservación N=a Jaqna. También tenemos la esperanza de que las consecuencias devastadoras de la extensión de la guerra angoleña en territorio de Namibia haga que el Gobierno de Namibia reconsidere su "invitación" a las Fuerzas Armadas Angoleñas (FAA). Si los san pudieran centrarse en sus aspiraciones, planes y proyectos sin interferencia de estructuras y grupos estatales más poderosos y dominantes, ellos podrían gradualmente lograr sus objetivos a nivel local, nacional y regional.

BOTSWANA

Una importante preocupación de los aproximadamente 53.000 *san* de Botswana en el año 2000 ha sido si las comunidades san podrán, o no, mantener sus derechos a la tierra y a los recursos dados los cambios que han ocurrido en las políticas gubernamentales de Botswana y los tipos de iniciativas de conservación y desarrollo que se están implementando en ese país. Según portavoces san y grupos de defensoría, como el Primer Pueblo del Kalahari (FPK), Fondo de Desarrollo Kuru (KDT) y el Grupo de Trabajo sobre Minorías Indígenas del Sur de África (WIMSA), hubo cuatro importantes áreas de interés en 2000: (1) derechos a la caza de subsistencia, (2) derechos territoriales, (3) derechos a los beneficios del turismo y de los proyectos de desarrollo y conservación relacionados con la fauna, y (4) derechos culturales y lingüísticos.

Derechos a la caza de subsistencia

Los *derechos de subsistencia* son aquellos derechos relacionados con la satisfacción de necesidades humanas básicas (p. ej., agua, alimento, abrigo y acceso a la asistencia sanitaria y medicinas). La negación del derecho a cazar y recolectar, según algunos, es un ejemplo de las restricciones impuestas sobre los derechos de subsistencia. Los san de Botswana comprenden perfectamente bien la necesidad de conservar la fauna, plantas y otros recursos. Al mismo tiempo, piensan que deberían tener la posibilidad de explotar los recursos siempre y cuando lo hagan sustentablemente.

Desde el año 1979 al 2000, Botswana era el único país de África que permitía a sus ciudadanos que realizaban caza de subsistencia (la caza con el propósito de obtener carne y otros productos derivados de los animales salvajes para un consumo familiar) a dedicarse a la caza legal. Esto fue hecho posible gracias a la previsión de la legislación sobre la conservación de la fauna de Botswana referente a las Licencias Especiales de Caza. En el resto de África, los pueblos definidos como cazadores y recolectores de subsistencia arriesgaban generalmente ser arrestados y encarcelados si se dedicaban a la caza de subsistencia. En marzo de 2000, el gobierno de Botswana emitió nuevas "Reglamentaciones de Parques Naturales y Reservas de la Fauna" (27 de marzo, 2000, *Botswana Government Gazette*). En la Sección 45.1 de estas reglamentaciones se establece lo siguiente:

> *Las personas residentes en la Reserva de la Fauna del Kalahari Central al tiempo del establecimiento de la reserva o las personas que pueden reclamar legalmente derechos de caza en dicha Reserva, pueden ser autorizadas por escrito por el Director (de la Fauna) a cazar especies específicas de animales y recolectar productos de la tierra en la reserva de la fauna, sujeto a los términos y condiciones y en las Áreas que el Director determine* (República de Botswana 2000).

Lo que esto significa, en efecto, es que las Licencias Especiales de Caza ya no serán emitidas. En cambio, los habitantes de la Reserva de la Fauna del Kalahari Central tendrán que presentar una solicitud al Departamento de Fauna y Parques Nacionales del Ministerio de Comercio e Industria para obtener derechos de caza en forma de una Licencia del Director. Por lo tanto, a partir del año 2000, no se otorgarán más Licencias Especiales de Caza a los cazadores de subsistencia de Botswana. Mientras tanto, la gente sigue siendo arrestada, encarcelada, multada y privada de sus bienes (es decir, caballos, asnos, armas, arneses, monturas). Uno de esos sucesos tuvo lugar en julio de 1999, cuando 13 hombres de New !Xade, uno de los poblados de reasentamiento, fueron arrestados por estar dedicados supuestamente a la caza ilegal. En este caso, 7 de los hombres fueron arrestados dentro de la CKGR por contravención, supuestamente, de la sección 2(3) de la "Ley de Conservación de la Fauna y Parques Nacionales, de 1992" (República de Botswana 1992). Además, 6 hombres fueron acusados de haber matado un órix en GH 10, una de las áreas de caza controlada (CHAs) en el Distrito de Ghanzi, a veces llamada el Área de Manejo de la Fauna Okwa, y fueron

Un actual asentamiento san, Botswana. Foto: Arthur Krasilnikoff

Joven san ataviada para la danza, Botswana. Foto: Arthur Krasilnikoff

BEST COPY AVAILABLE

acusados de haber violado la sección 19(3) de la "Ley de Conservación de la Fauna y Parques Nacionales, de 1992". Los hombres que fueron arrestados tenían Licencias Especiales de Caza, así que el cargo de cazar sin licencia fue rechazado por la justicia en octubre de 2000.

Derechos a la seguridad

Una importante preocupación de los san y otros habitantes rurales de Botswana está relacionada con los derechos a la seguridad. Los *derechos a la seguridad* incluyen los derechos a no sufrir tortura, ejecución y encarcelamiento, o derechos relativos a la integridad de la persona. Esta serie de derechos es especialmente importante a la luz de la frecuencia de los alegatos de supuestas torturas y maltratos de personas sospechosas de ser "cazadores furtivos" por parte de guardias de la fauna y otros funcionarios gubernamentales de Botswana. Tales incidentes ocurrieron, según se afirma, a fines de agosto de 2000 en el área Molapo de la Reserva de la Fauna del Kalahari Central (CKGR). Los alegatos sobre este caso son todavía inciertos y hay investigaciones en marcha sobre el asunto. Pero se ha obtenido alguna información general.

De acuerdo a informes de campo sobre el incidente, 20 hombres y 4 mujeres de Molapo en la CKGR fueron supuestamente detenidos por la Policía de Botswana de Rakops y guardias de la fauna del Departamento de la Fauna y Parques Nacionales, por estar supuestamente involucrados en actividades de caza ilegal. Algunas de las personas detenidas fueron llevadas al monte, lejos de Molapo y se dice que fueron torturados durante un período de 6 días. Después de ese incidente, un prominente miembro de la comunidad Molapo, Mathambo Sesasa, murió de un ataque al corazón, el cual, según algunos informes, fue resultado del tratamiento que recibió a manos de la policía y de los guardias.

Hubo otros incidentes en el año 2000 en los cuales individuos fueron arrestados y detenidos por cazar, supuestamente, sin licencia; en algunos casos, los cargos fueron rechazados. En otros casos, los individuos fueron mantenidos en la cárcel por períodos desmedidamente prolongados sin que se les permitiera saber sus cargos y sin tener acceso a representación legal.

La Reserva de la Fauna del Kalahari Central y los derechos a la tierra y a los recursos

Botswana ha dedicado una porción substancial de su área total a objetivos de conservación, como parques, reservas de la fauna y monumentos nacionales, todos los cuales caen bajo la categoría de tierra estatal (17% del país) y Áreas de Manejo de la Fauna (WMAs), que son bloques de tierra del país, casi la mitad de esas tierras ahora son Áreas de Manejo de la Fauna.

La Reserva de la Fauna del Kalahari Central (CKGR) en Botswana era una de las pocas reservas de la fauna de África que hasta hace poco permitía a los residentes continuar residiendo allí y ganarse la subsistencia. Como se informó en *El Mundo Indígena 1997-98* (p. 300-303), en mayo de 1997 el gobierno de Botswana reubicó a una considerable proporción de la población de la CKGR, más de 1.100 personas, en dos sitios fuera de la reserva, uno en el Distrito Ghanzi, al oeste de la reserva (New !Xade), y el otro en el norte del Distrito Kweneng, al sur de la reserva, Kaudwane, no lejos de la Reserva de la Fauna Khutse. Las poblaciones de las nuevas comunidades son tan numerosas y los recursos de las vecindades de los poblados tan pocos que los residentes no han podido sustentarse a sí mismos mediante la caza y la recolección, agropastoralismo a pequeña escala e industrias rurales, y entonces tienen que depender mayormente de los programas de ayuda del gobierno de Botswana para obtener ayuda económica.

Un Equipo Negociador de la CKGR se ha estado reuniendo con funcionarios del gobierno durante los pasados años y se reunió varias veces en 2000 con funcionarios del Departamento de la Fauna y Parques Nacionales. El Equipo Negociador está integrado por representantes del Primer Pueblo del Kalahari, Ditshwanelo (el Centro de Derechos Humanos de Botswana), el Consejo Cristiano de Botswana y WIMSA, junto con un asesor legal, Glyn Williams, de Chennells Albertyn, una firma legal con sede en Ciudad del Cabo, Africa del Sur. El Equipo Negociador ha pugnado por el reconocimiento del gobierno de Botswana de los derechos de los *g/wi, g//ana, bakgalagadi* y otros grupos indígenas de la CKGR, incluyendo (1) derechos residenciales, (2) derechos de caza, (3) derechos de recolección, y (4) derechos a una porción del retorno económico del turismo en la reserva.

El Equipo Negociador quiere asegurar que los pueblos que tienen derechos en la reserva obtengan algunos beneficios del turismo y otras actividades conectadas con la conservación y el desarrollo en la CKGR. El Equipo pide la inclusión de las necesidades de los residentes de la CKGR en el *Plan de Manejo de la Reserva de la Fauna del Kalahari Central*, el cual está actualmente en proceso de ser revisado y actualizado por el gobierno de Botswana. Se espera que el nuevo plan de manejo incluya "zonas de uso comunal" donde las personas de comunidades locales de la CKGR puedan continuar obteniendo los recursos necesarios para su subsistencia y para la generación de ingresos.

En diversas partes de Botswana, los san, con la asistencia de personal empleado por organizaciones no-gubernamentales, especialmente el Primer Pueblo del Kalahari y el Fondo de Desarrollo Kuru, han estado dedicados a trazar el mapa de los territorios san (tierras ancestrales) y modelos de tenencia de la tierra, como parte de una estrategia para obtener el reconocimiento del gobierno y del consejo del distrito de los derechos san de acceso a la tierra y a los recursos. Este proceso fue realizado usando instrumentos del Sistema de Posicionamiento Geográfico (GPS) y aplicando técnicas de Sistemas de Información Geográfica (GIS). Ese trabajo de cartografiado fue realizado en las áreas de Dobe y !Goshe de Ngamiland occidental, en el Área Estrecha del Okavango y en la Reserva de la Fauna del Kalahari Central.

Los *ju/'hoansi san* del área de Dobe trataron de institucionalizar más sus derechos a su tierra y recursos en Ngamiland occidental. Una de las formas en que procedieron fue a través del establecimiento de nuevas fuentes de agua, una exitosa en !Ubi (Qubi), la comunidad ju/'hoansi que es el *n!ore* más importante en el complejo de *n!oresi* (territorios tradicionales ju/'hoansi) de Dobe. El *n!ore* de !Ubi tiene un tamaño de unos 230 kilómetros cuadrados y es el único *n!ore* además del mismo Dobe, en el cual hay residentes ju/'hoansi todo el año.

En el proceso de solicitud de derechos al agua en Ngamiland occidental, algunos individuos intentaron en alguna ocasión no tener en cuenta a sus comunidades y obtener derechos individualizados sobre puntos de agua, algo que no cayó bien a otros ju/'hoansi, quienes han luchado por que los derechos sean otorgados a las comunidades y no a los individuos, algo mucho más relacionado con las tradiciones y sensibilidad ju/'hoansi. Afortunadamente, estos intentos no fueron exitosos y todavía existe la posibilidad de que diversos grupos familiares de Dobe, que tienen derechos tradicionales en la región en torno a Dobe, puedan obtener título sobre sus *n!oresi*, los cuales podrán administrar a través de un organismo comunitario representativo como un fondo fiduciario.

Otra vía que los san han intentado para obtener derechos a tierras y recursos fue dedicarse al manejo de recursos naturales de base comunitaria (CBNRM). El gobierno de Botswana promulgó una legislación en los años 80 y 90 que posibilitó a los habitantes locales de áreas comunales (tierras tribales) obtener derechos a los recursos silvestres si formaban una institución de base comunitaria, generalmente como un fondo fiduciario y luego solicitaban al Departamento de la Fauna y Parques Nacionales una cuota de la fauna para el área en que residían.

En octubre de 1997, el pueblo */xai/xai*, una comunidad de unas 350 personas en Ngamiland occidental, formó el Fondo /Xai/Xai (Cgae Cgae) Tlhabololo. A cambio de subarrendar parte de las áreas de caza controlada y su fauna, a las cuales los /xai/xai tenían acceso (NG 4 y NG 5), (que juntas constituyen un área de unos 16.966 kilómetros cuadrados), el fondo estuvo en situación de ganar tanto dinero como 1.000.000 de BWP por año. En agosto de 2000, había 24 personas empleadas por la agencia de safari y se suministraba alimentos, medicinas y otros artículos a la población /xai/xai como parte del acuerdo de empresa conjunta. En el año 2000, en Botswana había por lo menos media docena de fondos comunitarios en los cuales los san constituían la mayoría de la población, algunos de ellos en la región del Delta del Okavango y en torno a la misma, y otros en la parte occidental del país en los distritos del Noroeste, Ghanzi y Kgalagadi.

Sin embargo, en enero de 2001, el Ministro de Gobierno Local estipuló que los fondos comunitarios que habían sido formados en los años 90 y en los comienzos del nuevo milenio en Botswana ya no tenían derecho a retener el dinero generado por sus operaciones; en cambio, los recursos tendrían que ser dirigidos a los consejos de los distritos. La decisión del gobierno de Botswana fue combatida por organizaciones no-gubernamentales, colaboradores internacionales y los mismos san. En el momento de escribirse este artículo, no se ha llegado a ninguna decisión final sobre el estatus de los fondos comunitarios de Botswana.

Derechos culturales y lingüísticos

El tema de los derechos lingüísticos en Botswana ha sido de permanente interés para los san durante años. La política del gobierno de Botswana es que las lenguas enseñadas en las escuelas del país son la setswana y el inglés. No existe una educación en lengua materna de las llamadas lenguas minoritarias como el ju/'hoan, nharo, or !xoo. Los niños san que van a la escuela deben aprender setswana cuando comienzan su educación y a veces son alentados a no hablar sus propias lenguas. Los derechos de las minorías a hablar su propia lengua y promover sus propias tradiciones culturales fueron objeto de un simposio celebrado en la Universidad de Botswana ("Minorías Desafiantes, Diferencia y Ciudadanía Tribal") del 23 al 26 de mayo de 2000. En esa reunión, varios san expresaron la importancia de ser capaz de usar y enseñar las lenguas san.

Durante el año 2000 continuaron los esfuerzos para implementar actividades sobre educación de lenguas minoritarias como parte del Programa Educacional Nharo, en el Distrito Ghanzi. El trabajo del Programa de Escuelas Aldeanas (VSP) en Namibia, por el cual se está enseñando la lengua ju/'hoansi, tiene implicaciones potenciales importantes para los san de Botswana (ver LeRoux 1999; Batibo y Smieja 2000). Sin embargo, hasta ahora el gobierno de Botswana no ha tomado una decisión formal para permitir la educación en lengua materna de lenguas minoritarias en el sistema escolar de Botswana. El futuro de los san de Botswana depende mucho de su habilidad para convencer al gobierno de Botswana, las agencias internacionales y las organizaciones no-gubernamentales, sobre la importancia de prestar atención a los derechos sociales, económicos y culturales, los cuales ellos consideran un asunto de supervivencia cultural e incluso física.

Referencias

Batibo, Herman M. y Birgit Smieja, eds. (2000) *Botswana: The Future of the Minority Languages.* Frankfurt am Main y Berna: Peter Lang.

LeRoux, Willemien (1999) *Torn Apart: San Children as Change Agents in a Process of Acculturation.* Ghanzi, Botswana y Windhoek, Namibia: Kuru Development Trust and the Working Group of Indigenous Minorities in Southern Africa.

Republic of Botswana (1992) *Wildlife Conservation and National Parks Act, 1992.* Gaborone, Botswana: República de Botswana.

Republic of Botswana (2000) National Parks and Game Reserves Regulations (27 de marzo, 2000), *Botswana Government Gazette.* Gaborone, Botswana: República de Botswana.

SUDAFRICA

La situación política de los pueblos indígenas de Sudáfrica cambió repetidamente durante el año 2000. Los diferentes departamentos del gobierno fueron más o menos colaboradores pero sin una guía política coherente o un compromiso político emergente del Gabinete del Presidente.

En 1999, el Presidente Thabo Mbeki demostró el compromiso de su gobierno para resarcir a los pueblos indígenas, acelerando la restitución de tierra a los pueblos *‡khomani, !xû* y *khwe.* Sin embargo, este impulso no continuó en el año 2000. El deseo de Mbeki de destacar la posición de liderazgo de Sudáfrica con respecto a los derechos humanos en África y en la ONU fue eclipsado por otros sucesos internos, como el debilitamiento de la moneda y un desastre en torno a las opiniones del Presidente sobre el SIDA y otros problemas de relaciones públicas.

Sudáfrica reconoce a los pueblos indígenas

El año comenzó auspiciosamente con el apoyo abierto de Sudáfrica a la Declaración de la ONU y el Foro Permanente, durante un debate de la Comisión de Derechos Humanos en Ginebra, en marzo de 2000. Sudáfrica declaró inequívocamente que reconoce la presencia de pueblos indígenas en Sudáfrica y desafió a otros países africanos a ser honestos con respecto al tema. Los observadores de la ONU destacaron que Sudáfrica puede ser capaz de alentar a Canadá y a otros países con buena disposición a acelerar la velocidad del proceso del Proyecto de Declaración sobre los Derechos de los Pueblos Indígenas (UNDDPRIP). El Departamento de Relaciones Exteriores se mostró entusiasta en cuanto a elaborar una política coherente en el Foro Permanente de la ONU y el UNDDPRIP. Sin embargo, la política exterior sudafricana sólo puede ser articulada después de una clarificación de la política interna conexa, lo cual todavía no se ha logrado (ver más adelante)

Sudáfrica y Canadá participaron en una sesión informativa especial y conjunta del Comité Coordinador de los Pueblos Indígenas de África (IPACC) y activistas de base de Burundi y Argelia, donde ha habido casos de violaciones extremas de los derechos humanos contra los pigmeos *batwa* y los *amazigh* (*beréberes*) respectivamente.

En Sudáfrica, el presidente de la Comisión Sudafricana de Derechos Humanos (SA-HRC), Dr. Barney Pityana, asumió la valiente actitud de exigir a la Comisión Africana sobre Derechos Humanos y de los Pueblos que investigara la grave situación de los pueblos indígenas en todo el continente. La propuesta fue resistida acaloradamente por algunos Comisionados pero fue finalmente aceptada como un tema de investigación. Entonces Sudáfrica comisionó su propio informe sobre la situación de los derechos de los pueblos indígenas en Sudáfrica y sobre temas internacionales conexos.

El concepto de "poblaciones indígenas" causa demoras en la publicación del Informe SA-HRC

Un año después, el informe SA-HRC sobre derechos indígenas todavía no se ha hecho público porque ha quedado entrampado en el sistema burocrático del DCD/DPLG, que fue reorganizado y recibió nuevas prioridades desde arriba (ver más adelante). El informe SA-HRC trata aparentemente algunas de las dificultades conceptuales para reconocer una población "indígena" dentro de una sociedad africana más amplia, así como hace también una serie de recomendaciones para ayudar a sustentar la identidad y los derechos indígenas sobre la base de la experiencia internacional. La más dramática de éstas es probable que sea la recomendación de facilitar los movimientos transfronterizos de los pueblos indígenas entre Namibia y Botswana. El informe SA-HRC argumenta, supuestamente, que el derecho a la supervivencia cultural y la igualdad requiere esa movilidad[1]. Como las fronteras son un tema muy sensible en África, esta recomendación que opone principios constitucionales internos a las prácticas burocráticas regionales, es probable que cause algunas dificultades a Pretoria. Tan recientemente como en 1999, algunos ‡khomani san fueron arrestados por caminar unos pocos metros del otro lado del cerco de alambre de púas que separa a familias que viven en Sudáfrica y en Botswana.

Consecuentemente, el Departamento de Relaciones Exteriores se vio obstaculizado en el desarrollo de más iniciativas políticas hasta que el

Departamento de Asuntos Provinciales y Locales (DPLA) haya solucionado la política interna.

El mandato del Departamento de Desarrollo Constitucional (DCD) causa problemas

La clave del problema gira en torno al mandato del Departamento, el cual supuestamente es tratar temas constitucionales y la instrucción específica de investigar las demandas de aquellas personas que se identifican a sí mismas como pueblos indígenas en Sudáfrica. Este Departamento también tiene que guiar al Gabinete en la elaboración política, primero a nivel interno y luego en la política internacional.

Originalmente, el Departamento de Desarrollo Constitucional (DCD) tenía un mandato para investigar el sistema tradicional de jefaturas de los pueblos *khoe* y san. Históricamente, los san no tenían "jefes" sino más bien un complejo sistema de familias "propietarias" de fuentes de agua, y otros roles de liderazgo, como curanderos, chamanes que bailan en trance, cazadores, etc. En forma similar, cualquiera fuera el sistema de jefatura que existía entre los *nama* en Sudáfrica, el mismo desapareció en la época colonial. En contraste, los grupos *griqua* todavía disputan acaloradamente sus respectivas demandas sobre el liderazgo tradicional. Las situaciones de los griqua y otros pueblos indígenas del país varía significativamente. Los grupos griqua fueron más asimilados a la cultura protestante de habla "afrikaans" y a la asociada identidad "de color" de los períodos coloniales y del *apartheid*. Los grupos nama, a lo largo del Río Orange, y los ‡khomani (o más precisamente los *n| |n‡e*) del Kalahari han mantenido su amenazada lengua y muchos todavía tienen acceso a importantes sistemas de conocimiento tradicional, incluyendo un avanzado conocimiento de plantas, animales y del medio ambiente. Las poblaciones !xû y khwe inmigraron de Angola y Namibia, trayendo consigo robustas tradiciones culturales y lenguas que no fueron tan socavadas por la intensa agresión de la administración colonial y del *apartheid*.

Esta diversidad de experiencia histórica e identidades tradicionales se hizo más compleja cuando apareció un nuevo elemento alegando la identidad indígena e insistiendo en la participación en la investigación del DCD. Un grupo de personas antes definidas como "de color" (es decir, de ascendencia mixta europea, asiática o africana) surgió y alegó que eran los herederos de las entidades culturales históricas khoe en todo el país. Basándose en documentos históricos escritos, los restauradores-khoe demandaron el estatus de jefatura y reclamaron nombres (holandeses) de grupos étnicos y culturales khoe que habían dejado de existir hace dos siglos.

El DCD se enfrentó, por un lado, a una miríada de complicadas demandas de jefatura, y por otro lado, a una evidente situación de pueblos indígenas rurales sin ningún sistema de jefatura pero con serios problemas económicos y sociales, típicos de los pueblos indígenas de todo el planeta.

El DCD lanzó un programa de investigación para aclarar las demandas y necesidades de las comunidades, incluyendo un informe sobre sistemas tradicionales de jefatura. A mediados de año, el gobierno nacional reestructuró el DCD, convirtiéndolo en el Departamento de Asuntos Provinciales y Locales (DPLA). La cartera indígena debería haber sido trasladada al Departamento de Justicia pero, debido a problemas de capacidad y logística, quedó en el DPLA, aunque con menor importancia y pocas esperanzas de un inmediato asesoramiento político importante.

En el año 2001, el DPLA fue reestructurado una vez más y fue rebautizado como el Departamento de Gobierno Provincial y Local (DPLG). El DPLG fue despojado de todas las responsabilidades de monitoreo constitucional. Como resultado, el informe sobre las necesidades y demandas de los pueblos khoe y san se ha trancado en un proceso burocrático sin que se evidencie ninguna salida. El largamente esperado informe SA-HRC sobre derechos indígenas se convirtió en una de las víctimas de esta desaceleración política. El informe SA-HRC, que está atado directamente al proyecto de investigación de la Comisión Africana sobre Derechos Humanos y de los Pueblos, está siendo retenido por el Ministro del DPLG hasta que sean resueltos otros asuntos relativos a una política más amplia sobre dirección entre los grupos étnicos mayoritarios.

El proyecto de investigación khoe y san está siendo incorporado a un proceso mayor del DPLG de revisión del sistema tradicional de jefatura de la población mayoritaria (pueblos de habla bantú, reconocidos tanto por el régimen colonial como por el *apartheid*). Existe poca probabilidad de que los jefes negros acepten que el término "indígena" tenga un uso restringido a los pueblos khoe y san, particularmente cuando está siendo asociado con grupos nacionalistas restauradores "de color". Se considera que los sudafricanos "de color" han gozado de ciertas concesiones y derechos especiales durante el período del *apartheid*, un hecho no olvidado por los políticos y líderes negros de hoy.

Implementación de derechos básicos a la lengua lleva a la renegociación del estatus de los líderes san y nama

En una nota optimista, el Organismo de Lenguas Khoe y San (KSLB), una estructura creada constitucional y legalmente, ha aumentado su capacidad y comenzó a tener un impacto político. Después de un año de proceso de desarrollo organizacional patrocinado por el Instituto Sudafricano San (SASI), el KSLB está comenzando a hacer sentir su presencia. El KSLB ha llamado a la restauración de los nombres khoe y *¡ui* de lugares en la Provincia Septentrional del Cabo, incluyendo la restauración del nombre del

Río Orange, originalmente conocido como el *Kai !Garib*. El KSLB ejercerá una mayor presión sobre el gobierno para implementar la educación de la lengua nama a lo largo del Kai !Garib, e insiste en la creación de alfabetos efectivos para los !xû y *khwedam*. Los líderes san y nama consideran la implementación de sus derechos básicos a la lengua como el fundamento para renegociar su estatus dentro del país y recuperar el respeto de su propia juventud.

En el distrito Gordonia, SASI ayudó a la comunidad ‡khomani a ubicar a más de sus ancianos que hablan la casi extinta lengua *n|u*, la última variedad de la familia lingüística *!ui* hablada antes en toda Sudáfrica. Se encontraron 25 *n|u* parlantes, aunque cuatro murieron en 1999-2000. En octubre y noviembre de 2000, doce ancianos viajaron de vuelta al Kalahari, a su tierra recientemente devuelta, para enseñar su lengua a una juventud entusiasta que ha crecido en áreas urbanas. El proyecto de enseñanza de la lengua es parte de una cooperación general entre SASI y la comunidad para ayudar a manejar y restaurar los sistemas culturales de conocimiento y las habilidades tradicionales. El trazado de la historia de los san del distrito está en un estadio avanzado y está siendo usado en la negociación sobre manejo conjunto y derechos de uso dentro del Parque Kgalagadi Transfrontier.

Activistas san presionan por el reconocimiento de derechos dentro del Parque Nacional

El tópico del manejo conjunto del Parque Nacional sigue siendo un tema polémico y de alta prioridad para los activistas san. Actualmente, los san tienen la propiedad legal de 25.000 hectáreas no especificadas dentro del Parque como parte del acuerdo de tierras de 1999. Sin embargo, los líderes san solicitan un reconocimiento más amplio de otros derechos dentro del Parque, incluyendo el derecho a visitar cementerios, realizar investigación y capacitación, realizar rituales sagrados e, idealmente, usufructuar sustentablemente los recursos naturales. Las autoridades de los Parques Nacionales Sudafricanos (SANP) siguen siendo ambiguas en cuanto a si consideran el acuerdo de tierras como parte de un acuerdo de manejo conjunto que podría contemplar un mayor uso de los sistemas tradicionales de conocimiento en la conservación, el turismo y administración, o si consideran que el acuerdo de tierras es un intento de contener la supuesta amenaza contra el Parque.

Activistas !xû y khwe continuaron promoviendo el proceso de sacar a sus 4.500 compatriotas de un empobrecido campamento de tiendas de campaña en tierras militares y trasladarlos a la nueva y fértil tierra en Platfontein, después de su exitosa demanda de tierras. Las estructuras de dirección !xû y khwe siguen fortaleciéndose, con una nueva generación de jóvenes líderes que juega un importante rol en la interacción con el Estado. Los proyectos artísticos y artesanales avanzaron muy exitosamente con la apertura de una nueva tienda en Ciudad del Cabo para ayudar a promover la variedad de productos tradicionales y contemporáneos. Con el apoyo de la Corporación de Emisoras Sudafricana (SABC), las comunidades !xû y khwe lanzaron la primera estación radial que transmite en lenguas san. La radio XK-FM emite localmente en lengua !xû y khwedam, ninguna de las cuales tiene un alfabeto escrito.

El proyecto de la Organización Internacional del Trabajo (OIT) sobre Pueblos Indígenas y Tribales comisionó y publicó un informe sobre Pueblos Indígenas Sudafricanos, examinando las necesidades y tendencias políticas. El informe puede conseguirse en la oficina de la OIT en Ginebra.

ASIA DEL SUR

ASIA DEL SUR

BANGLADESH

Chittagong Hill Tracts

A pesar del acuerdo alcanzado entre el Gobierno de Bangladesh y el Parbattya Chattagram Jana Samhati Samiti (JSS) en diciembre de 1997 con el objetivo de llevar la paz a la inestable región de Chittagong Hill Tracts, la situación sigue siendo tensa e incierta. Existe una gran preocupación porque el Acuerdo de Paz no ha provisto a los pueblos indígenas de CHT su prometida autonomía regional ya que el gobierno no ha cumplido con sus obligaciones conforme al Acuerdo.

A los tres años, el Acuerdo sigue sin implementarse en áreas claves como la habilitación del Consejo Regional, el establecimiento de una comisión de tierras, la rehabilitación de los *jumma* desplazados internamente, el reasentamiento de los colonos patrocinados por el estado fuera de CHT y la retirada de las fuerzas armadas de la región. Pero lo que ha surgido como otro asunto complejo para restaurar la paz en CHT es la tensión interna entre el JSS y el Frente Unido Democrático Popular (UPDF). El UPDF fue formado por fracciones del Consejo de los Pueblos Montañeses (Pahari Gano Parishad), del Consejo de los Estudiantes Montañeses (Pahari Chattra Parishad), y de la Federación de Mujeres Montañesas (HWF), quienes se opusieron al Acuerdo porque, en su opinión, no cumple con las demandas jumma para una plena autonomía regional.

Se han realizado intentos de resolver las diferencias entre las dos partes, diferencias que consisten más en términos de enfoque que en metas y objetivos, como la iniciativa de un grupo de respetados ancianos jumma, incluyendo a Upendra Lal Chakma, de la Asociación por el Bienestar de los Refugiados Jumma. Hasta el momento, los dos grupos todavía no han llegado a un entendimiento aunque se han reunido en varias ocasiones. Además, miembros de ambos grupos han sido arrestados y/o detenidos en custodia policial y en cárceles (especialmente del grupo del UPDF). El 12 de enero de 2001, Sanchay Chakma, uno de los líderes del UPDF, fue arrestado durante una reunión pública en Chittagong, junto con otros ocho miembros y simpatizantes del UPDF; todavía no han sido liberados. Dentro de este contexto, informes recientes indican que ha habido un aumento de delitos menores y robos armados. Sin embargo, el aspecto más disturbador es que esta tensión interna brinda al gobierno una excusa para justificar la continuada presencia de las fuerzas armadas en el área.

BEST COPY AVAILABLE

Se están realizando esfuerzos para que el JSS y el UPDF acuerden una cooperación en aras del fortalecimiento de la autonomía indígena en CHT, incluso dentro de los parámetros del Acuerdo y terminen su relación conflictiva. Se espera que las dos partes resuelvan sus diferencias a la brevedad por el bien del interés colectivo de los jumma.

El Acuerdo de Paz

La implementación del Acuerdo de Paz sigue siendo un tema polémico. A pesar de que el gobierno alega que el 98% de sus previsiones han sido implementadas, el proceso de implementación ha sido criticado interna y externamente.

En septiembre de 2000, una delegación parlamentaria de la Unión Europea describió el proceso de implementación como *"muy lento"* y enfatizó la urgencia de una plena devolución de poderes al Consejo Regional y a los Consejos de Distritos Montañeses, la retirada de las fuerzas armadas de CHT y el reasentamiento de los colonos bengalíes fuera de CHT. La delegación aclaró que la UE decidió que la futura ayuda financiera estará condicionada a un progreso tangible en la implementación del Acuerdo. Jyotirindra Bodhipriyo Larma, dirigente del JSS y presidente del Consejo Regional interino, también ha demandado persistentemente la plena implementación del Acuerdo de Paz en todos sus términos y condiciones. Identificó a la no-implementación del Acuerdo como la principal razón de la creciente inestabilidad en CHT.

Aunque se han dado algunos pasos legislativos con respecto a los consejos, todavía no ha sido lograda la implementación práctica de una transferencia de poder al Consejo Regional (CR) y los Consejos de Distritos Montañeses (CDMs) en Bandarban, Khagrachari y Rangamati. La burocracia civil y militar del gobierno todavía retiene los poderes más importantes, como la ley y el orden y la administración de tierras.

Las fuerzas armadas también continúan jugando un rol activo en CHT. La orden de 1973, que impuso un régimen militar en CHT, todavía está vigente y sólo unos pocos campamentos han sido desmantelados hasta ahora (un informe del JSS alega que sólo 31 de 500 han sido desmantelados). Hay informes de violaciones de derechos humanos, arrestos, intimidaciones y hostigamientos cometidos por las fuerzas armadas, generalmente en colaboración con colonos. Amnesty International informa que han ocurrido incidentes que recuerdan prácticas militares pasadas, que han resultado en la muerte de indígenas e incendio de sus casas (*Bangladesh: Human rights in the CHT, 2000*). También hay informes de violaciones, a veces de adolescentes.

Derechos territoriales

La erosión de los derechos territoriales de los indígenas jumma continúa sin menguar a través de diferentes medidas, incluyendo la no-implementación del Acuerdo y acuerdos conexos.

En abril de 2000, el Juez Abdul Karim fue nombrado para dirigir la Comisión de Tierras, la cual será responsable de la adjudicación de las de tierras en disputa en CHT. No obstante, la comisión todavía no es plenamente operacional y sus otros miembros, incluyendo a los jefes tradicionales de CHT, todavía no han sido formalmente nombrados. La Comisión tiene que decidir sobre todas las disputas relativas a la tierra en CHT y su decisión será definitiva. Es esencial que la Comisión de Tierras sea pronto operativa y que adopte un enfoque objetivo e imparcial con respecto a las conflictivas disputas de tierra.

Esto es de seria importancia cuando se lo analiza dentro del contexto de la afluencia de unas 400.000 personas no-jumma, introducidas a CHT entre 1979 y 1984 por un programa de transferencia poblacional patrocinado por el gobierno. Estos colonos recibieron tierras que pertenecen de derecho a los jumma y éstos fueron expulsados por la fuerza de sus tierras tradicionales para dejar lugar a los colonos o, en el marco del turbulento clima de colonización, militarización y opresión, buscaron refugio en países vecinos o en áreas boscosas más remotas. Es claro que la mayor parte de los potenciales conflictos de tierra, si no todos, están relacionados con el programa de transferencia poblacional, una práctica que fue condenada por el derecho internacional como ilegal y como una grave violación de los derechos humanos.

Por lo tanto, es incluso más disturbador notar que el jefe del Equipo de Trabajo, establecido para la rehabilitación de los refugiados jumma que retornan y de los desplazados internamente, haya decidido incluir a 38.156 familias colonas como "desplazados internamente", para indignación de los pueblos indígenas, incluyendo al JSS. Temen que esto permitirá a los colonos demandar tierras que les fueron adjudicadas ilegalmente por el gobierno.

Muchos de los refugiados jumma no han recibido en devolución sus tierras ancestrales tal como fue acordado por el gobierno como una condición previa para su retorno a CHT (algunas de estas tierras están ocupadas por los colonos). En su reciente informe sobre Tierra y Derechos Humanos en CHT, la Comisión de CHT estima que con las 90.208 familias de refugiados jumma y las 38.156 familias colonas identificadas por el Equipo de Trabajo, más de la mitad de la población de este área ha sido desplazada por el conflicto de 25 años de duración (*Update 4*, 2000).

La adquisición y arrendamiento de tierras en CHT también continúa sin disminuir a pesar del Acuerdo y de la legislación existente. El departamento forestal ha estado adquiriendo tierras para crear Reservas Forestales con propósitos de forestación. Esto impedirá efectivamente a los pueblos indígenas usar el bosque y sus recursos, y convertirá a cualquier contravención en un crimen. Los decretos aprobados en 1992, 1996 y 1998 para demarcar casi 220.000 acres como Reserva Forestal siguen vigentes a pesar de las repetidas demandas en pro de su revocación.

También hay alegatos de que Comisionados Adjuntos en los tres distritos montañeses están arrendando tierras a personas no-indígenas y el ejército ha tomando en arriendo más de 30.000 acres de tierra en el distrito de Bandarban para hacer un centro de entrenamiento de artillería, el cual se estima que desplazará a unos 25.000 indígenas. Estas adquisiciones y transferencias son contrarias a las previsiones del Acuerdo, así como también a la legislación existente de CHT, que exige que ninguna tierra puede ser arrendada, vendida o transferida de otro modo sin la previa aprobación de los consejos de distritos montañeses. Se organizó una manifestación de protesta contra estas adquisiciones de tierra en Bandarban, en octubre de 2000, la cual fue apoyada por todos los sectores indígenas, incluyendo diferentes grupos políticos y sus estudiantes y sus sectores juveniles, y por los líderes tradicionales.

Otra amenaza a los derechos territoriales de los indígenas jumma es la causada por la minería. La United Meridien Company de EE.UU. encontró grandes reservas de gas en CHT y hay planes de comenzar a perforar en las áreas de Baghaichari, Jurochari y Dighinala. Esto no tendrá solamente como resultado el desplazamiento de los pueblos indígenas que viven en estas áreas, sino que también constituye una importante amenaza para su salud y bienestar, causando además degradación del medio ambiente. Como el gas (y el petróleo) es altamente combustible, es probable que la agricultura "swidden" o rotativa –que implica la quema de vegetación- no sea permitida en la vecindad de los emplazamientos de perforación de gas (o petróleo). Esto conducirá casi seguramente a una mayor marginación de los ya empobrecidos agricultores indígenas de CHT.

Lo que es incluso aun más alarmante es un plan del gobierno de elevar el nivel de las aguas del embalse de Kaptai en 14 pies para producir dos unidades de 50 megawatt de energía eléctrica. El proyecto es financiado conjuntamente por Japan Bank of Investment Corporation (JBIC). La represa de Kaptai fue construida en 1960 e inundó 40.000 acres de fértiles arrozales y desplazó a más de 100.000 indígenas jumma (muchos de los cuales siguen siendo desplazados internos). Elevar el nivel del agua del lago acarreará consecuencias socioeconómicas y ambientales devastadoras para los pueblos indígenas.

La Junta de Desarrollo Energético del gobierno está ansiosa por iniciar el programa a pesar de su impacto negativo sobre los habitantes locales. La Junta criticó públicamente a las ONGs de base comunitaria que han facilitado un debate sobre las dimensiones del programa propuesto sobre los derechos humanos, en un esfuerzo de destacar sus efectos. Hay indicios de que el programa será implementado a pesar de las protestas de los pueblos indígenas.

Salud y educación

Un informe de evaluación rural sobre Seguridad de Subsistencia en CHT, publicado en abril del año 2000 por CARE, una ONG internacional, concluye que los jumma enfrentan importantes problemas de salud y de educación. Informa que la *"malaria y la diarrea son endémicas en CHT y constituyen las causas más comunes de mortalidad infantil"*, la cual ya es elevada. Informa que sólo el 26% tiene acceso a agua potable, especialmente en áreas remotas, donde los pozos de tubo generalmente se secan durante parte del año. El informe también examina el nivel educativo en CHT y concluye que es bajo, con un elevado índice de abandono escolar, especialmente por parte de las niñas. Atribuye esto al hecho de que la instrucción es en bengalí, la cual no es la lengua materna de los niños indígenas, y a la discriminación contra los estudiantes indígenas.

Sin embargo, el asunto más importante fue la conclusión de que la mayoría de las comunidades indígenas se ven enfrentadas a carencias alimentarias que van desde moderadas hasta severas, causadas principalmente por la escasez de tierra. Esto se ve exacerbado por la afluencia de colonos de las llanuras a las tierras ancestrales de los jumma, así como también por la práctica de convertir tierras tradicionales en reservas forestales y arrendar tierras a personas no-indígenas (unos 5.000 acres sólo en el distrito de Rangamati). Ha habido informes de la existencia de hambre en áreas remotas de CHT y aunque algunas agencias internacionales han provisto ayuda de emergencia, el problema continúa.

Intolerancia religiosa y discriminación

Los indígenas jumma enfrentan la discriminación en todas las áreas de sus vidas cotidianas. El problema es destacado por el informe interino del Informante Especial de la ONU sobre la Eliminación de todas las formas de Intolerancia Religiosa (9 de agosto de 2000). El Informante Especial, Sr. Abdelfattah Amor, visitó Bangladesh y CHT en mayo del año 2000 y destaca en su informe que aunque la Constitución de Bangladesh no reconoce formalmente a los pueblos indígenas como tales, la Primer Ministro –en su discurso de 1999 ante la Conferencia de la Apelación por la Paz de La Haya, se refirió específicamente a la cuestión de CHT y al derecho de un pueblo indígena a preservar su propia identidad, cultura, tradiciones y valores.

El informe refiere al incidente de Babu Chara Bazar, de octubre de 1999, cuando el ejército, asistido por 150 colonos, atacó a indígenas jumma en el bazar y saqueó un templo budista, atacó a los monjes y profanó las estatuas de Buda (muchos jumma son budistas). El Informante Especial también informa que los pueblos indígenas son frecuentemente sometidos a *"presión encubierta por parte de ONGs islámicas e incluso grupos extremistas musulmanes, intentando convertirlos al islamismo a cambio de servicios o dinero. Ciertos representantes interpretaron la asistencia financiera provista por el Estado para la* *construcción de nuevas mezquitas y 'madrasahs' (escuelas religiosas) como una política discriminatoria favoreciente al islamismo ya que, en contraste, las instituciones religiosas indígenas recibieron magros subsidios públicos."*

En su informe, el Informante Especial de la ONU concluye que el Estado parecer ser *"más sensible a los intereses de los musulmanes"* y que esto se refleja en los obstáculos enfrentados por las personas no-musulmanas en términos de acceso a empleos en el sector público, especialmente a posiciones de responsabilidad. Va incluso más lejos e identifica este enfoque como la razón de las demoras en la implementación plena del Acuerdo de Paz en favor de las comunidades étnicas/pueblos indígenas en Chittagong Hill Tracts. En conclusión, el Informante exhorta a las autoridades a aplicar plenamente el Acuerdo, y lo más rápido posible, pues este Acuerdo es fundamental para la supervivencia de los pueblos indígenas de CHT y la preserva de su identidad étnica, religiosa y cultural.

Desarrollo

Desde el Acuerdo de Paz, una gran cantidad de ONGs nacionales y extranjeras y agencias internacionales (UNICEF, UNESCO, Banco Mundial, Banco Asiático de Desarrollo) han comenzado a operar en CHT. Sin embargo, como el proceso de implementación del Acuerdo de CHT está demorado y el Consejo Regional y los Consejos de Distritos Montañeses todavía no están plenamente habilitados, los pueblos indígenas no creen que ningún desarrollo realizado en este período interino sea plenamente sustentable, a menos que, y hasta que, sea realizado con su consentimiento y participación a todos los niveles. Sin embargo, muchas iniciativas son simplemente implementadas sin ninguna participación significativa de parte de los pueblos indígenas y sin tomar en consideración sus características especiales y, por esta razón, también han sido criticadas muchas de las más importantes ONGs nacionales.

La Unión Europea adoptó una Resolución el 17 de enero de 2001, exhortando al Gobierno de Bangladesh a acelerar la implementación del Acuerdo, incluyendo la habilitación del Consejo Regional y el establecimiento de una Comisión de Tierras. También reiteró su apoyo al total reasentamiento y rehabilitación de los jumma refugiados y desplazados internamente así como también al posible reasentamiento de los 400.000 colonos bengalíes fuera de CHT. No obstante, reafirmó que toda asistencia financiera estaría condicionada a un progreso substancial en la implementación del Acuerdo de Paz y la necesidad de proyectos culturalmente apropiados (B5-0048/2001/rev.1).

No obstante, Dinamarca, un país miembro de la Unión Europea y un país líder en la protección de los derechos indígenas en los foros internacionales, ha entrado en un proyecto de financiación conjunta con el Banco Asiático de Desarrollo, para financiar un proyecto de infraestructura en

CHT, primariamente para caminos y puentes, a un costo estimado de $60,3 millones. Dada la continua militarización del área, los jumma temen que esto sólo servirá los intereses del estado en detrimento de sus derechos.

Los garo: actualización sobre el incidente de Chailtachara

El 18 de diciembre de 1999, un grupo de bengalíes musulmanes atacaron la aldea *garo* de Chailtachara en el distrito de Moulvibazar, con la intención de ocupar la aldea y sus tierras forestales circundantes. El Jefe de la aldea, Gregory Nokrek, fue apuñalado y las casas fueron saqueadas. En ese momento, Gregory Nokrek apeló a la policía en busca de justicia, pero esta no vino (ver *El Mundo Indígena 1999-2000*, p. 293f).

Los periódicos nacionales, los intelectuales y escritores informaron sobre el incidente y expresaron su preocupación y apoyo. Mientras tanto, sin embargo, la aldea garo de 20 familias, con 168 acres de bosque de montaña, ha sido ocupada por bengalíes en nombre de Kormodha Bohumukhi Samity, una organización dirigida por el presidente del Consejo de la Unión Bengalí. Los árboles han sido talados y vendidos. El Jefe Gregory Nokrek huyó a la India. Se informa que ahora está trabajando en una mina de carbón en Meghalaya, India. No existe información sobre el paradero de su esposa, la esposa de su hijo, la hija de su hermano o su nieto de un año de edad, quienes fueron secuestrados.

Comunidades garo y khasi amenazadas por parque ecológico

Se reveló recientemente un plan para el establecimiento de un parque ecológico en tierras *khasi* y garo en el área boscosa de Moulvibazar. Más de 1.000 familias garo y khasi serán expulsadas si el plan se pone en marcha. El Ministerio Forestal y de Medio Ambiente no consultó con los pueblos indígenas locales antes de planificar el parque ecológico.

El Comité Nacional de Coordinación Adivasi se opone a la creación del parque ecológico. En febrero de 2001, se organizó un gran mitin público y una huelga de hambre para detener el parque ecológico en tierras ancestrales khasi y garo.

NEPAL

Pueblos indígenas exigen enmiendas constitucionales

Los pueblos indígenas nepaleses están realizando campañas en pro de la enmienda de la actual Constitución del Reino de Nepal. Una Consulta Nacional sobre Estrategias Integradas para Promover los Derechos de las Nacionalidades Indígenas de Nepal, celebrada en Dhulikhel, en el Distrito Kavre (Nepal Central) del 16 al 20 de enero del año 2000, organizada por la Federación de Nacionalidades de Nepal (NEFEN) y el Grupo Internacional por los Derechos de las Minorías (MRG), había propuesto cambios constitucionales para abolir todas las cláusulas discriminatorias de la constitución, estatutos y leyes consuetudinarias del país. Esta consulta nacional fue precedida por dos reuniones regionales: las consultas regionales orientales que fueron celebradas del 4 al 5 de enero, 2000, en Dharan, Distrito Sunsari, y las consultas regionales del centro y del oeste, celebradas del 7 al 8 de enero de 2000, en Narayanghat, Distrito Chitwan. A la reunión central asistieron representantes de NEFEN, profesionales legales, intelectuales, representantes de las organizaciones de pueblos indígenas y diferentes partidos políticos, activistas de los derechos humanos, ex miembros del Parlamento, un ex miembro de la Comisión de Redacción de la Constitución de 1990 y miembros de la Organización de las Mujeres Indígenas. Participaron 59 delegados en total en la consulta nacional, 17 de ellos mujeres. La consulta nacional analizó:

1. Desarrollos relacionados con la protección y promoción de los derechos de las nacionalidades indígenas en Nepal.
2. Previsiones constitucionales de leyes y estatutos referentes a las nacionalidades indígenas en Nepal.
3. Consideración del uso de leyes del derecho internacional, declaraciones, convenios, acuerdos, otras disposiciones constructivas y derechos y declaraciones emergentes relativas a los derechos de los pueblos indígenas en el contexto de Nepal.
4. Previsiones legales y de otro tipo que afectan los derechos de las mujeres indígenas en Nepal, y
5. Políticas recomendadas para la promoción y protección de los derechos de las nacionalidades indígenas y las estrategias para lograrlo.

Se aprobaron una serie de recomendaciones para enmiendas constitucionales y legales como resultado. Se hizo un listado de 27 propuestas para enmiendas constitucionales y se decidieron siete estrategias concretas. También se hicieron otras siete propuestas de enmienda relativas al Muluki Ain (código civil), acompañadas por diferentes estrategias concretas. Se redactaron 37 propuestas de enmienda relativas a otras 30 leyes y nueve propuestas sobre temas concernientes a las mujeres indígenas. Finalmente, la consulta exigió la formación de una Asamblea Constituyente para redactar las enmiendas constitucionales.

La consulta también propuso exigir la autonomía para los pueblos indígenas en lo relativo a su desarrollo social, cultural y político. Según la actual Ley de Autonomía Local, las unidades administrativas locales son los 75 Distritos (DDC) y 4.000 Comités de Desarrollo Aldeano (VDCs), que no han sido creados de acuerdo a los intereses de los pueblos indígenas. Los grupos indígenas tampoco están adecuadamente representados en estas unidades. La consulta exige una re-división y reorganización de estas unidades en base a la región, la lengua y la fuerza numérica de los grupos étnicos. El sistema electoral también debería ser organizado de tal manera que las mayorías del área pertinente esté adecuadamente representada. Debería enmarcarse también una ley de derechos consuetudinarios para salvaguardar los derechos de propiedad intelectual de los pueblos indígenas y, deberían enmendarse las leyes correspondientes para garantizar el acceso, control y manejo de tierras tradicionales y otros recursos por parte de los pueblos indígenas.

Las comunidades exigen igualdad de derechos a la lengua

A pesar del reconocimiento constitucional y legal de las muchas lenguas habladas por los diferentes grupos étnicos de Nepal, en junio de 1999 la Suprema Corte emitió una orden contra las decisiones de usar las lenguas locales como lenguas oficiales adicionales por parte de la Ciudad Metropolitana de Katmandú, el Comité de Desarrollo del Distrito de Dhanusha y la Municipalidad de Rajbiraj (ver *El Mundo Indígena 1999-2000*).

Las comunidades de lenguas diferentes creen que la decisión de la Suprema Corte es sumamente prejuiciosa y es contraria a sus aspiraciones. La Federación de Nacionalidades de Nepal (NEFEN) organizó, por lo tanto, la Primera Conferencia Nacional sobre Derechos Lingüísticos, que tuvo lugar en Katmandú del 3 al 4 de marzo del año 2000. Se reunieron 78 organizaciones indígenas y de derechos humanos, incluyendo representantes de 44 comunidades lingüísticas, en apoyo de la causa por la igualdad de los derechos a la lengua. La Conferencia formuló una doctrina de igualdad en la esfera de la lengua y aprobó la Declaración Nacional sobre Derechos Lingüísticos, que contiene 31 artículos. La Conferencia rechazó la decisión de la Suprema Corte y exigió enmiendas a los artículos de la Constitución de 1991 del Reino de Nepal relacionados con la discriminación lingüística.

El Nepal Bhasa Sangharsa Samiti organizó el 17 de marzo de 2001 un simposio nacional de un día sobre cómo implementar la Declaración Nacional sobre Derechos Lingüísticos, en Katmandú. Nepal Tamang Ghedung

Foto: Sv. Å. Lorenz Christensen

Foto: Sv. Å. Lorenz Christensen

formó un Comité redactor de Abogados bajo la Presidencia del Ex Ministro de Justicia Sarbagya Ratna Tuladhar para preparar un proyecto de "Ley de Derechos Lingüísticos" con el objetivo de presentarlo en la próxima sesión del parlamento.

Las Comunidades Lingüísticas de todo Nepal decretaron un "Día Negro" el 1 de junio de 2000, en conmemoración del día en que la Suprema Corte emitió la orden de detener el uso de lenguas indígenas y locales en los organismos autónomos locales. Se organizaron demostraciones masivas a nivel nacional, campañas de pancartas y panfletos, procesiones y mítines masivos. Se decidió continuar el "Día Negro" hasta que el Gobierno cambie las leyes y decretos del país para asegurar la igualdad de derechos lingüísticos.

La ley sobre las nacionalidades todavía no ha sido presentada al Parlamento

El gobierno había prometido presentar la ley sobre la "Academia Nacional para la mejora de las Nacionalidades" en la sesión parlamentaria de 1999. Sin embargo, en el 2000 todavía no había sido tratada. La ley fue simplemente archivada por los miembros del parlamento. También es importante notar que en la ley, que fue preparada por el Ministerio de Desarrollo Local, el nombre del pueblo *newar* ha sido eliminado de la lista aprobada de las 61 nacionalidades indígenas. Esto significa una continuación de la misma táctica de "dividir para reinar" que el gobierno ha usado para controlar a los pueblos indígenas durante los últimos 233 años. El noveno plan de desarrollo de Nepal establece también que el gobierno formará un "Consejo de los Pueblos Indígenas" a nivel de distrito y a nivel central para el desarrollo de las nacionalidades indígenas en todo el país. Y, sin embargo, nada se ha materializado.

Campaña para incluir la identidad étnica en el censo de población

Durante muchos años, el censo nacional de población ha sido usado por la casa dominante hindú para confirmar su mayoría en el país. El gobierno se ha negado en el pasado a publicar cifras poblacionales de acuerdo a su origen étnico. Debido a la creciente presión de las nacionalidades indígenas, el Estado publicó por primera vez cifras preliminares sobre la población étnica/casta en 1991. Sin embargo, muchas comunidades indígenas no estaban identificadas en el censo de 1991 y las cifras de población de muchos de aquellos que están en la lista son demasiado bajas. Además, aunque el gobierno de Nepal reconoció 61 grupos como nacionalidades indígenas, 35 de los mismos no son enumerados en la lista oficial publicada del Censo Poblacional de 1991. Como el gobierno de Nepal va a realizar otra vez un censo poblacional en junio del año 2001, las nacionalidades indígenas están haciendo campañas ahora para ser incluidas en el próximo censo. Una delegación de organizaciones indígenas bajo la conducción del Sr. Parshuram Tamang, Secretario General de NEFEN, se reunió con el Vicepresidente de la Comisión Nacional de Planificación y presentó un memorándum demandando la inclusión de todos los grupos étnicos en el censo poblacional. Nepal Tamang Ghedung (NTG), una organización nacional de pueblos indígenas, también exigió el establecimiento de una "Comisión Nacional del Censo de Población" para garantizar un censo imparcial.

Movimiento para combatir el tráfico de mujeres

El tráfico de mujeres es un problema creciente en Nepal. Hasta la fecha, aproximadamente 200.000 niñas y mujeres han sido traficadas fuera de Nepal, un tercio de ellas menores de dieciséis años. Las estimaciones del número de mujeres nepalesas traficadas fuera de Nepal a la India todos los años varía ampliamente, de 5.000 a 20.000. El 90% de estas mujeres y niñas provienen de comunidades indígenas. Nepal Tamang Ghedung organizó una mesa redonda para reunir a ONGs y organismos gubernamentales para revisar la política estatal y actividades existentes relativas a este problema y trazar en el año 2000 un plan de acción para el futuro. En base a las recomendaciones de la mesa redonda, Nepal Tamang Ghedung solicitó al gobierno instituir una nueva ley para combatir el tráfico de mujeres y niñas en Nepal, discutir con el Gobierno de la India una posible cooperación para repatriar a las mujeres traficadas y promover el propuesto convenio de la Asociación para la Cooperación Regional del Sur de Asia (SAARC) contra el tráfico de mujeres y niñas en el sur de Asia.

Continúan las violaciones de derechos humanos

El Partido Comunista de Nepal (Maoísta) ha estado involucrado durante ya cinco años en una lucha armada conocida como la "Guerra Popular" para establecer una república socialista. Más de 1.500 personas han sido muertas en los combates entre las fuerzas gubernamentales y el Grupo de la Guerra Popular. Los más afectados por los conflictos armados son los pueblos indígenas y sus territorios. En estos territorios, parece, hay dos gobierno presentes: los representantes del gobierno de Katmandú en los Cuarteles Generales del Distrito y el gobierno de la Guerra Popular en las áreas rurales. La vida y la propiedad de los pueblos indígenas se han visto amenazadas cada vez más. Las violaciones de los derechos humanos como la violación, las matanzas indiscriminadas, el secuestro, la tortura y las desapariciones son comunes. Se esperaba que hubiera un diálogo entre el gobierno y el Grupo de la Guerra Popular para minimizar las violaciones de derechos humanos, pero el largamente esperado diálogo no tuvo lugar, supuestamente y en gran medida porque el gobierno no creó un entorno conducente al diálogo.

Cuarto Congreso Nacional de NEFEN

La Federación de Nacionalidades de Nepal celebró su Cuarto Congreso Nacional del 7 al 8 de agosto del año 2000 en Katmandú, demostrando la variedad de cultura de los diversos grupos étnicos del país. Los ornamentos, vestimentas, lenguas y rostros de cinco docenas de nacionalidades indígenas en la ceremonia de apertura el 7 de agosto de 2000, reflejaron cuán diverso es Nepal en términos de religión, cultura y lengua. Cuando se fundó la federación hace diez años, estaba integrada solamente por ocho grupos. Al cuarto congreso nacional de NEFEN asistieron representantes de 33 organizaciones miembro. Aunque hace apenas una década la etnicidad y los temas indígenas estaban limitados a un ejercicio académico, hoy son el objeto de un vívido debate nacional.

La lucha de los kamaiyas por la supervivencia

Para muchos *kamaiyas*, el pueblo indígena *tharu* que se convirtió en trabajadores en servidumbre, el 17 de julio del año 2000 fue un día de victoria. Ese día, el Gobierno de Nepal decidió ilegalizar la práctica de tener kamaiyas, que ha prevalecido en los distritos de Banke, Bardiya, Dang, Kailali y Kanchanpur, en Nepal (ver *El Mundo Indígena 1999-2000*). Pero los kamaiyas no podían saber que la victoria pronto sería seguida por la angustia. Un mes después que el gobierno decidió liberar a los trabajadores en servidumbre, miles de ellos fueron expulsados de sus abrigos por los terratenientes y se informó que 2.525 familias deambulaban sin techo durante el monzón. Se les pidió que pagaran su deuda a los ex "dueños" y se informó de casos de kamaiyas que fueron azotados, atacados con armas y cuyos abrigos fueron incendiados. En última instancia, todo esto es el resultado de la falta de un programa de rehabilitación. Los kamaiyas han solicitado ayuda a los Comités de Desarrollo Aldeano, a los Comités de Desarrollo de Distrito y a organizaciones no-gubernamentales de a miles, debido a su falta de alimentos, medicina y abrigo. Algunas de las organizaciones políticas han hecho oídos sordos al sufrimiento de los kamaiyas porque los consideran como simpatizantes de partidos políticos rivales. Aunque el gobierno ha hablado de un paquete de ayuda para los kamaiyas, ninguna ayuda ha alcanzado los distritos remotos hasta ahora. Además, el 6 de diciembre, el gobierno prometió entre un *kattha* (3.645 pies cuadrados) y cinco *kattha* de tierra para cada familia desplazada. Ninguno de ellos ha recibido ninguna tierra hasta el momento. Aparte del hecho de que esta cantidad de tierra sería insuficiente para sustentar a una familia, no existe ningún sistema para facilitar la redistribución de la tierra. Los ex trabajadores en servidumbre por deudas están profundamente frustrados por la inacción de las autoridades. Muchos de ellos está ocupando ahora la principal autopista que une el oeste con el este de Nepal, exhibiendo su sufrimiento y exigiendo su rehabilitación. Las ONGs culpan al gobierno por su inacción y el gobierno culpa a las ONGs por desvirtuar la causa en su propio beneficio.

Los pueblos indígenas de Terai se organizan

Por primera vez, los pueblos indígenas de la región de tierras bajas de Terai se organizaron con el objetivo de coordinar la implementación de las recomendaciones del taller celebrado en Damak, Jhapa, este de Terai, Nepal, del 29 al 30 de diciembre del año 2000. El taller fue organizado conjuntamente por Nepal Tamang Ghedung y la Alianza Internacional de Pueblos Indígenas y Tribales de los Bosques Tropicales, Departamento del Sur de Asia, Katmandú, Nepal. El tema del taller era "Los pueblos indígenas *terai* (habitantes de las tierras bajas) y sus problemas". Al taller asistieron 37 personas indígenas de las nueve comunidades terai y, como resultado, se formó un comité regional de los pueblos indígenas terai. Estos pueblos indígenas suman menos de 10.000 personas. Son los habitantes originales del Terai y han sido despojados por la llamada "reforma agraria" del gobierno. Como no pudieron presentar documentos a los funcionarios gubernamentales, sus derechos territoriales no fueron reconocidos y quedaron sin tierras y sin hogares. Hoy están atrapados entre los inmigrantes de la vecina India y la región montañosa de Nepal. Mucho de los tharu, por ejemplo, han terminado como trabajadores en servidumbre (ver párrafo anterior).

INDIA

Introducción de la Ley sobre Biodiversidad en el Parlamento

En mayo de 2000, la Ley de Diversidad Biológica 2000 fue introducida en el Parlamento en cumplimiento del Convenio sobre Diversidad Biológica de 1992 del cual India es signataria. Los objetivos de la Ley son la conservación, el uso sustentable y el reparto equitativo de los beneficios de la diversidad biológica. La Ley busca regular el acceso para asegurar el reparto equitativo del uso de los recursos y del conocimiento, para proteger la propiedad intelectual, el conocimiento local/comunitario, para proteger y recuperar las especies amenazadas y para involucrar a instituciones tradicionales de autogobierno. La Ley es aplicable a extranjeros, organismos corporativos extranjeros e indios no-residentes (Cláusulas 3, 4 y 6), quienes tendrán que obtener "permiso" para investigar y usar los recursos biodiversos y el conocimiento local. La Ley prevé una estructura reglamentaria centralizada con una Autoridad Nacional de la Biodiversidad (NBA), seguida de la Junta Estatal de la Biodiversidad y el Comité de Manejo de la Biodiversidad a nivel local. La NBA actúa como un tribunal civil en asuntos que surjan de los castigos previstos por la Ley por las violaciones de sus previsiones, así como por las violaciones de las directivas de la NBA.

Aunque esta Ley ha sido alabada como "revolucionaria", incluso por ambientalistas progresistas, es condenada por las organizaciones *adivasi* y por los pueblos indígenas como otra pieza más de legislación colonialista. Hasta la fecha, la falta de una legislación reguladora ha pavimentado el camino para el completo saqueo de plasma gérmico y del conocimiento –especialmente de los adivasi- mediante medios tortuosos, bajo el disfraz de la investigación, el desarrollo tribal y la conservación de la naturaleza, tanto por extranjeros como por socios indios. El gobierno siempre se ha encogido de hombros argumentando una plausible falta de legislación apropiada. Debido a la globalización y a la implementación de los regímenes de la OMC, es imperativo que se establezcan reglas para la entrada eficiente del capital transnacional para explotar en forma rentable la biodiversidad y el conocimiento del pueblo y, en realidad, para su propio desarrollo rápido. Ciertamente, la Ley es casi explícita en su enfoque de instrumentar decentemente un vínculo entre el capital foráneo y el capital indio en su saqueo, mientras que exhibe un manto nacionalista. Los indios y las compañías indias ¡necesitan sólo "informar" (no obtener permiso) a la Junta Estatal de la Biodiversidad! En otras palabras los capitalistas indios son tratados con mano suave y se les otorga una prioridad liberal como si fueran mejores que los capitalistas foráneos. En realidad, como los capitalistas indios y extranjeros trabajan frecuentemente en colaboración, la ley allana el camino para la entrada de capitalistas extranjeros por la puerta de atrás.

Existe también la amenaza agregada de que algunas áreas ricas en biodiversidad sean declaradas como "sitios de patrimonio nacional" de donde se puede desplazar a la población. Ya, de los más de 600.000 desplazados de alrededor de 421 Santuarios de la Fauna y 75 Parques Nacionales, 500.000 son adivasis. Contrariando el Convenio de la ONU sobre Diversidad Biológica, la comunidad –la Gram Sabha- no figura, a pesar de la Ley Panchayat Raj (Extensión de las Áreas Registradas "Scheduled Areas") de 1996, que otorga primacía y supremacía al Gram Sabha, incluyendo el comando sobre los recursos y la propiedad sobre productos forestales menores. El ciudadano tiene expresamente prohibido recurrir a la justicia respecto a aquellas previsiones que caen dentro del ámbito de la Ley. Como es bastante natural, la estructura implementadora de la Ley no contiene ninguna previsión sobre la representación comunitaria. El Foro Coordinador Panindio de Adivasis/Pueblos Indígenas, en su Taller Nacional sobre Biodiversidad y Adivasis/Pueblos Indígenas celebrado en Nueva Delhi del 29 al 31 de enero de 2001, había señalado estas y otras debilidades, exigiendo una importante revisión de la Ley.

La Suprema Corte en favor de las grandes represas

En un ilógico, peligroso y antipopular veredicto, la Suprema Corte de India permitió la construcción incondicional y sin trabas del polémico Proyecto Sardar Sarovar (SSP). La Corte Superior, en su sentencia mayoritaria en el Litigio de Interés Público de Narmada Bachao Andolan contra el SSP el 18 de octubre de 2000, se negó a tomar ningún conocimiento de los serios temas como costos-beneficios, los reclamos de beneficios y los aspectos ambientales del proyecto, como tampoco de los grandes problemas de desplazamiento y rehabilitación. Narmada Bachao Andolan condenó a la corte por aparentemente seguirle el juego a los constructores de la represa y a los poderes económicos y políticos dominantes. Acusaron a la corte de ser negligente con sus propias órdenes y con la lógica de órdenes previas, las cuales habían resultado en la suspensión del trabajo de la represa durante casi cinco años. Quedó entendido que el gobierno usaría indefectiblemente la sentencia para desplazar a gente sin reasentamiento. Desgraciadamente, la corte acordó seguir la construcción sin ningún plan o tierra donde rehabilitar a las 35.000 familias afectadas ya registradas y casi la misma cantidad de familias aún no reconocidas. En su comunicado de prensa, NBA se preguntaba, en vista de la incapacidad oficialmente reconocida del gobierno del estado de Madhya Pradesh de proveer tierra para el reasentamiento de los desplazados debido a la represa de 90 metros de altura, qué haría la Corte frente a la rehabilitación de más personas en la eventualidad de una construcción más alta, caso en el que muchos que habían sido desplazados hace 10 o 15 años tendrán que ser rehabilitados otra vez.

Informe de la Comisión Mundial sobre Represas

Aunque el Gobierno de la India no permitió que la Comisión Mundial Sobre Represas celebrara una audiencia pública en el país, su informe, que fue publicado inmediatamente después de la sentencia de la Suprema Corte, expuso la parcialidad de la sentencia en favor de las grandes represas, con una desequilibrada alabanza de las represas y la premisa positiva e infundada de que la rehabilitación había brindado un estándar de vida más alto a la gente afectada por el proyecto. El informe de la Comisión reivindicó claramente los temas que los movimientos populares habían planteado y por los cuales habían luchado durante la mitad del siglo pasado, como la planificación de grandes represas, impuestas y justificadas, sin respeto por los derechos de los pueblos a los recursos y a la planificación del desarrollo y sin dejar lugar, o muy poco, para la evaluación de impacto social y ambiental en su toma de decisión.

El Informe mostró que:

- Las grandes represas han forzado a 40-80 millones de personas a abandonar sus hogares y tierras, con consecuencias que incluyen extremas dificultades económicas, desintegración comunitaria y un aumento de los problemas de salud mentales y físicos. Las comunidades indígenas, tribales y campesinas han sido golpeadas particularmente fuerte. Las personas que vivían corriente abajo de las represas también sufrieron un aumento de las enfermedades y la destrucción de los recursos naturales de los cuales depende su subsistencia.
- En lo que respecta a los beneficios en términos de servicios de agua y de energía, el precio pagado frecuentemente por las personas, especialmente en términos sociales y ambientales, es inaceptable e innecesario.
- Los beneficios de las grandes represas fueron a parar, en su gran mayoría, a manos de los ya pudientes mientras que los sectores más pobres de la sociedad han cargado injustificablemente con los costos.

El gobierno se prepara secretamente a enmendar el 5º Registro ("5th Schedule")

La demanda, rápidamente creciente, de recursos minerales del mundo está poniendo en peligro la misma existencia de muchas comunidades y culturas indígenas. El primer año del milenio en India pudo contemplar las formaciones de batalla de la globalización en la puerta de sus territorios.

Los fundadores de la Constitución India introdujeron algunas pocas salvaguardias en forma de Registros para la protección de las minorías indígenas. El 5º y 6º Registro eran las dos legislaciones más importantes protectoras para impedir la transferencia de tierra indígena a personas no-indígenas. No obstante, las violaciones de estos registros han existido desde el comienzo. Samata, una ONG de Andhra Pradesh, planteó el asunto y obtuvo una sentencia histórica de la Suprema Corte en septiembre de 1997, impidiendo la transferencia de tierras indígenas con propósitos comerciales. Fue una sentencia que levantó agitación en el mundo corporativo en un momento de liberalización. El Gobierno de la India reaccionó rápidamente y, en un artículo publicado en el "Mining Journal", Londres, aseguró a las compañías mineras prospectoras que no había motivo para el temor.

La Suprema Corte rechazó subsecuentes apelaciones del Gobierno de Andhra Pradesh y del Gobierno de la Unión. Los intereses comerciales incontrolados y el saqueo del capital privado y global han sido así mantenidos fuera de las Áreas Registradas.

Sin embargo, como la globalización y liberalización han ganado terreno en India, las corporaciones privadas y las compañías multinacionales han ejercido mucha presión sobre el gobierno. El gobierno centrista de La Alianza Democrática Nacional (NDA), desairado por la Suprema Corte, ahora está preparando secretamente razones para enmendar el Quinto Registro de la Constitución, una prueba de ello fue una nota secreta del Ministerio de Minas, del 10 de julio de 2000 (No.16/48/97-M.VI). La nota ubica claramente los intereses de los "organismos corporativos extranjeros" por sobre los intereses del pueblo y de las tribus registradas, y sugiere que la sentencia de la Suprema Corte puede ser subvertida efectivamente efectuando "las enmiendas necesarias para superar la mencionada sentencia de la Suprema Corte, eliminando la base legal de la mencionada sentencia". Esto se trata de realizar ahora mediante una enmienda al Artículo 244, cláusula 5(2), eliminando la prohibición y las restricciones sobre la transferencia y venta de tierras por parte de los adivasis a no-adivasis para realizar cualquier operación no-agrícola, incluyendo la prospección y la minería. El documento secreto sigue diciendo que "El atolladero creado por la sentencia Samatha puede quizá ser resuelto sólo mediante una enmienda del Quinto Registro de la Constitución, como lo opina el Ministro de Justicia. Una forma podría ser agregar la siguiente explicación después del párrafo 5(2) en el Quinto Registro:"

> *"Explicación: Las regulaciones enmarcadas en el párrafo 5(2) no deben prohibir o restringir la transferencia de tierra por miembros de la tribu registrada al Gobierno o la adjudicación por el Gobierno de su tierra a no-tribales para realizar cualquier operación no-agrícola, incluyendo el reconocimiento o la prospección o las operaciones mineras según las previsiones de la Ley MMDR de 1957".*

El intento de solución dentro del ámbito del sistema político-administrativo es simplemente sacar (desnotificar) las respectivas áreas de la propia lista del Área Registrada para que la sentencia de la Suprema Corte y el 5º Registro sean inoperantes. Con la entrada en vigencia de la Ley Panchayat Raj (Extensión del Área Registrada) de 1996, la lucha por el autogobierno a nivel aldeano ha recibido ciertamente un fuerte impulso (ver *El Mundo Indígena* 1996-97 p.217-9). Los adivasis en su conjunto y todos los sectores democráticos del país en general sostuvieron que la sentencia de la Suprema Corte en el caso Samata era un paso progresista hacia la comprensión del espíritu correcto del Quinto Registro de la Constitución. Sin embargo, el intento actual de cambiar la misma Constitución o modificar su área de aplicación es un recordatorio constante de que la lucha tiene que llevarse a cabo fundamentalmente en el ámbito político y que el espacio para la acción legal se está derrumbando. Estos planes, ahora expuestos, son condenados por las organizaciones adivasi.

La Alianza Nacional de Personas Afectadas por la Minería (mm&P) se apoderó en julio de 2000 de esta carta confidencial enviada por uno de los funcionarios del gobierno estatal al Ministerio de la Unión, requiriéndole alterar los poderes del 5º Registro. Cuando los grupos indígenas tuvieron conocimiento de la carta, lanzaron una fuerte campaña en todo el país para contrarrestar los nefastos designios del actual Gobierno. Si estos Registros son enmendados abrirán las compuertas de la enajenación de tierra tribal.

Fundación de la Alianza Nacional de Comunidades Afectadas por la Minería

La formación de la Alianza Nacional de Comunidades Afectadas por la Minería llamada "minas, minerales & Pueblo" (mm&P) es un gran acontecimiento en la historia de las comunidades que combaten a las compañías mineras. En su Convención Nacional en Hyderabad, en mayo de 2000, 87 grupos diferentes relacionados con la minería se reunieron bajo el nombre de *"Nuestra Tierra, Nuestros Minerales, NUESTROS DERECHOS"*. Mm&P ha estado jugando un rol de apoyo en las campañas y en la abogacía, quebrando el aislamiento de los grupos de resistencia.

Formación de nuevos estados

Después de una prolongada lucha por la autonomía política, los pueblos indígenas de la región oriental del cinturón tribal central de la India lograron finalmente obtener el estatus de estado en forma de Jharkand y Chhattisgarh, que limitan el uno con el otro. Sin embargo, los pueblos indígenas de la región cultural de Jharkand que viven en el cinturón actualmente dominado por no-indígenas de Bengala Occidental y Orissa se sintieron derrotados y frustrados debido al fracaso de incluir sus áreas en el recién formado estado de Jharkand. Los pueblos indígenas de la región de Jharkand sintieron, en general, que el Gobierno Central cometió una injusticia con ellos al formar un estado llamado Jharkand en el cual, contrariamente a lo que demandaban, ellos constituyen solamente el 27% de la población total. A Chhattisgarh, con un 44% de población indígena, también se le negó el estatus de estado dominado por pueblos indígenas mediante la no-inclusión de las áreas límites del vecino estado de Orissa. Por lo tanto, la formación de estos dos estados no fue realizada sobre la base de la demanda de los pueblos indígenas de autonomía cultural sino que fue basada en la conveniencia administrativa y, como los activistas de los movimientos por los estados separados señalaron, en el malvado designio del estado, siempre promoviendo los intereses de los industriales y compañías transnacionales para frustrar la causa del pueblo.

Jharkand

La masacre de Tapkara

El 2 de febrero de 2001, en un horrendo acto de represión estatal, la policía del recién formado estado de Jharkand abrió fuego contra una asamblea desarmada de los *mundas* y mató a 8 personas, hiriendo seriamente a otras 16 en Tapkara, el centro del movimiento antirepresas Koel-Karo. No obstante, uno de los fallecidos pertenecía a la comunidad minoritaria musulmana. La policía cometió aparentemente este infame crimen para romper la unidad y el espíritu de lucha de los pueblos indígenas de la región, quienes han sido capaces de detener la construcción de grandes represas en los ríos Koel y Karo durante los últimos 25 años o más.

Sin embargo, este acto bárbaro no logró disminuir el espíritu de lucha del pueblo. Según el Jefe munda del linaje Guria, el incidente expuso la naturaleza clasista del actual gobierno bajo el Partido Bharatiya Janat, del ala derecha. En los siguientes mítines públicos, el pueblo demostró su unidad y reiteró su determinación de detener la construcción de la represa propuesta a cualquier costo.

La muerte de adivasis desarmados levantó fuertes condenas en todo el país. En Jharkand, todos los partidos políticos de oposición, las organizaciones populares y de la sociedad civil acusaron al Gobierno de ser antitribal y exigieron su inmediata renuncia así como descartar el Proyecto Hidroeléctrico Koel-Karo. También realizaron campañas en apoyo de las demandas.

Exitosas protestas no-violentas en Chandil

A diferencia del caso del Proyecto Hidroeléctrico Koel-Karo, en que el gobierno trata de atraer a la gente afectada por el proyecto para que acepten ser reasentados ofreciéndoles atractivos paquetes de rehabilitación, el mismo gobierno está haciendo muy poco para rehabilitar a los afectados por la represa Chandil en el Río Subarnarekha, en Singhbhum Occidental, distrito de Jharkand. El gobierno finalizó la construcción del drenaje de la represa en 1990/91 y consecuentemente sumergió total o parcialmente 52 aldeas. En total, 5.000 familias fueron desplazadas. De éstas, sólo el 12% ha sido reasentado y en forma inadecuada. La situación del resto sigue siendo espantosa.

En diciembre de 2000 el gobierno comenzó la instalación de las compuertas radiales en Chandil. Sin embargo, el trabajo ha sido detenido por la *satyagraha*, una protesta no-violenta que comenzó el 23 de febrero de este año frente a la oficina del Ingeniero Superintendente, cerca de la represa Chandil. La protesta había sido iniciada por el Visthapit Mukti Vahini, un movimiento popular que funciona en el área desde 1987. Los activistas del Visthapit Mukti Vahini destacan que si se completa la instalación de las compuertas radiales (el objetivo del gobierno es completarla para junio de 2001), la altura de la represa aumentará otros 15 metros. Esto causará sumergimientos a gran escala y desplazamiento de otras 10.000 familias. Según ellos, el gobierno no tiene ningún derecho moral para iniciar más trabajos relacionados con la represa que causen más desplazamiento, hasta que aquellas personas ya desplazadas por la represa sean adecuadamente rehabilitadas.

Movimiento Salvar al Bosque de Jharkand

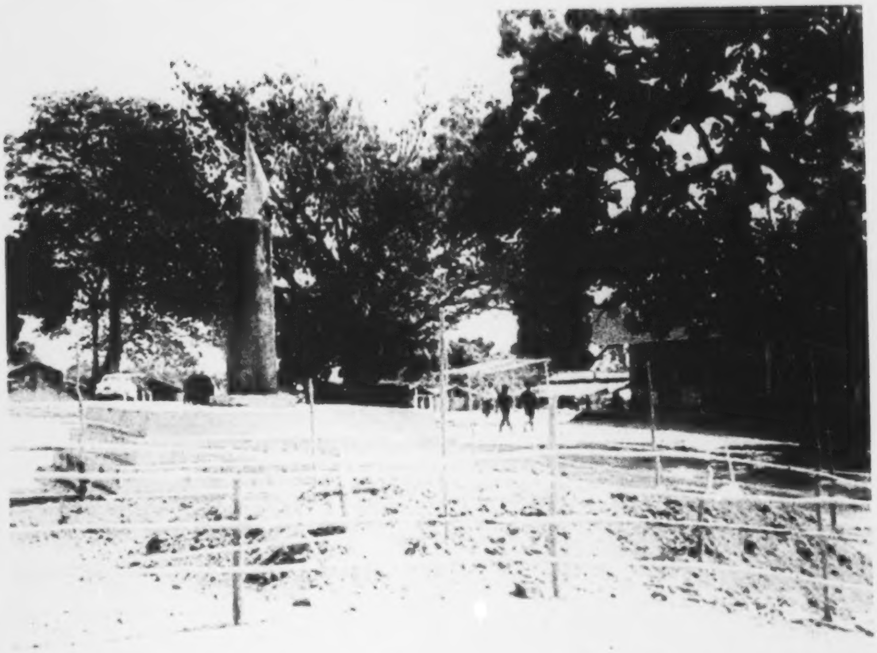
En respuesta a la disminución de la cobertura forestal y sus efectos extremadamente adversos sobre los medios de subsistencia de los pueblos indígenas en varias aldeas, se formaron "Comités Aldeanos para la Protección del Bosque". El 19 de noviembre de 2000, se formó un foro bajo la consigna de "Movimiento Salvar al Bosque de Jharkand", en Murhu, Distrito Ranchi, con el objetivo de unir todas estas iniciativas diseminadas. Las importantes demandas planteadas en la reunión fueron:

1. Restauración de los derechos del pueblo sobre el bosque volviendo a la situación anterior al advenimiento del régimen colonial británico en la región en el siglo XIX.
2. Derogar inmediatamente la Ley de Bosque Protegidos Privados de Bihar (1952), que autoriza al gobierno a apropiarse de los bosques ancestrales legalmente reconocidos de los mundas en nombre del "manejo científico".
3. Conversión de las aldeas dentro de las áreas de reserva forestal en aldeas de ingreso.
4. Arresto y castigo de las mafias forestales y funcionarios forestales corruptos.

Se lanzó un sitio web, http://jharkhandforest.com, para marcar la ocasión.

Orissa: abren fuego contra protestantes indígenas

Rayagada, en Orissa, es ahora un campo de batalla entre las organizaciones de pueblos indígenas y Utkal Aluminium Industries Ltd. (UAIL), un consorcio de compañías de aluminio que incluye a ALCAN de Canadá y Norsk Hydro de Noruega. Apoyado por el gobierno del estado, UAIL ha lanzado una guerra contra aquellas personas que se resisten a la adquisición de



Sitio en Tapkara donde fueron enterrados los cuerpos, víctimas del fuego de la policía. Foto: archivo de IWGIA

Jharkhand. Foto: Roger Begrich

tierras. Durante los pasados cinco años, la resistencia popular ha sido efectiva, no permitiendo a UAIL comenzar la construcción. El 16 de diciembre de 2000, en la Aldea Mikanch, cuatro adivasis fueron muertos y más de cincuenta fueron heridos cuando la policía abrió fuego contra ellos. El incidente tuvo lugar como consecuencia de la protesta de los aldeanos contra la extracción de bauxita de las cercanas sierras Bapilimali. Temprano en la mañana del siniestro día, 130 policías junto con el Oficial del Bloque de Desarrollo local llegaron a la aldea para investigar sobre la confrontación que había tenido lugar los días previos entre los aldeanos y los dirigentes político-partidarios locales que estaban tratando de forzar a la gente a abandonar su lucha contra la minería. La policía, que estaba buscando a los hombres de la aldea, golpeó a una mujer y disparó al aire. En este punto, algunos hombres que estaban escondidos en sus casas salieron y corrieron hacia la colina. La policía corrió tras ellos y disparó de atrás indiscriminadamente, dejando a cuatro hombres muertos en el lugar y a más de cincuenta heridos. También mataron cuatro vacas. Más tarde, matones locales maltrataron a los miembros de un equipo investigador de Eka Parishad cuando visitaron la aldea.

La apertura de fuego fue sin duda parte de la estrategia policial para desmoralizar y amenazar al pueblo y debilitar a las organizaciones que luchan contra el desplazamiento. Orissa ostenta la dudosa distinción de contener la mayor cantidad de compañías multinacionales y la mayor cantidad de adivasis desplazados.

Fuente

Eka Parishad, Orissa

Madhya Pradesh

Matan a indígenas del bosque

El 2 de abril, después de una operación de una semana de duración durante la cual fueron demolidas predominantemente las casas de las tribus *bhil*, *bhilala* y *korku*, la administración del distrito de Dewas, Madhya Pradesh, asestó el golpe final, matando a tiros al menos a cuatro indígenas en una manifestación del poder represivo del estado.

La matanza de Dewas es otro incidente de la confrontación entre el estado y los adivasis, que data desde el tiempo en que los colonizadores británicos convirtieron a los bosques en propiedad estatal, una política seguida entusiastamente desde la independencia. Contrariamente a la opinión de los adivasis, que hacen responsable al nexo funcionarios-contratistas-políticos de la destrucción de los bosques, la opinión del estado es que el uso ilegal de los recursos forestales por parte de los adivasis es la razón principal de la destrucción de los bosques, lo cual debe ser detenido con mano dura. Entonces, en Dewas, la administración se puso como objetivo el Adivasi Manch Sangathan, un foro de muchas organizaciones tribales, establecido para afirmar sus derechos sobre los bosques. El administrador de Dewas, Ashok Burnwal, por lo menos en dos discursos en Pipri y Udainagar en los pasados dos meses tronó contra los adivasis y sus organizaciones, diciendo que serían aplastados en seis meses. Comenzando el 28 de marzo, él y el Superintendente de Policía supervisaron la destrucción de casas, aldea tras aldea en Kadudiya, Potla, Patpadi, Jamasindh, Katukiya, Mehendikheda etc. Para justificar la represión, la policía difundió el rumor de que los Naxalitas (fuerzas armadas marxistas clandestinas) habían penetrado el área y estaban engañando a los adivasis. Sin embargo, finalmente la gente juntó el coraje para reunirse en Mehendikheda para presentar una protesta. La policía les disparó, matando a cuatro. La evidencia sugiere la ausencia de tiro cruzado y la sangre fría de la matanza.

Fuente
Vinod Raina, SACW News

Tomando como blanco a las organizaciones populares – aún otra ley negra

La "Ley de Seguridad de Áreas Especiales de Madhya Pradesh 2000" fue aprobada por la Asamblea Legislativa el 27 de noviembre de 2000 sin ningún debate ni discusión significativos. Ahora está aguardando la aprobación del Presidente. Se publicita como una ley para detener las actividades ilegales de organizaciones de ciertos pueblos y de los Naxalitas.

Cualquier organización o grupo de personas puede ser prohibido si sus actividades son declaradas ilegales. Se puede prohibir organizaciones y grupos que abarcan desde un grupo informal de personas hasta sindicatos y no necesitan estar registrados para caer dentro del ámbito de esta ley propuesta, la cual se aplica a aquellos denominados como sus simpatizantes. La lista de actividades definidas como ilegales es muy general, por ejemplo, actividades que puedan disturbar la ley y el orden, o la paz, o tengan tendencia a crear obstáculos para el mantenimiento del orden público, etc.

El gobierno no está obligado a divulgar las razones de la prohibición. No otorga ninguna oportunidad a las organizaciones/grupos para presentar su caso antes de la declaración de la prohibición. Existe una previsión de confiscación de todas las propiedades muebles o inmuebles y bienes de las organizaciones/grupos prohibidos. Se otorgan poderes ilimitados a los Administradores de Distrito y al Superintendente de Policía.

Esta ley, si es promulgada, tendrá poderes de gran alcance y tiene la intención de suprimir todo tipo de disensión, resistencia y movimientos populares en Madhya Pradesh. Esto se deja claro en los objetivos y razones de la Ley, que establecen que el peligro de las actividades ilegales de algunas organizaciones populares y de los Naxalitas la hacen necesaria. Pero será usada contra aquellos que están trabajando para proteger los derechos humanos básicos de la gente común.

De las seis actividades que han sido definidas como ilegales, sólo una puede decirse que está relacionada específicamente con las actividades Naxalitas. Esta es: usar medios violentos y terroristas para crear temor en la mentalidad popular o usar armas y explosivos. Las otras actividades que son definidas como ilegales son muy generales y poco claras, y pueden ser usadas contra cualquier organización popular, como disturbios del orden público, disturbio de la paz, impedir u obstruir el trabajo para imponer el imperio de la ley, sus instituciones y funcionarios o que pueda tener tendencia a hacerlo, etc. Estos no son actos extremistas y cualquier organización que intente destacar los problemas populares usando medios no-violentos o democráticos caería dentro del ámbito de la ley propuesta. Una serie de organizaciones de Madhya Pradesh ha anunciado su determinación y declararon que combatirán la Ley.

Karnataka: Pueblos indígenas víctimas de la "conservación" en el Parque Nacional Rajiv Gandhi

Después de la brutal y forzosa dislocación de 51 familias realizada por el Departamento Forestal y la Policía en la medianoche del 12 de junio del año pasado, el 23 de septiembre de 2000 llegaron al poblado tribal de Kolengere, en Nagarhole, numerosas tropas del personal del Departamento Forestal, para trasladar forzadamente a 30 familias tribales del poblado a un nuevo sitio de "rehabilitación" en Veeranahosalli, en los bordes del Parque Nacional y para demoler sus viviendas. Los habitantes locales trataron de defenderse de este ataque y fueron brutalmente reprimidos. Hombres y mujeres fueron golpeados por oficiales armados. Algunos individuos seriamente heridos fueron admitidos en hospitales en Gonikoppal y Kumara, mientras que otros recibieron primeros auxilios localmente. Algunos medios de difusión locales, instigados por el Departamento Forestal, emitieron información falsa de que los habitantes eran los instigadores del enfrentamiento con el apoyo de ONGs como CORD, Kushalnagar y DEED, Hunsur.

El histórico conflicto entre el Departamento Forestal y los habitantes tradicionales del Parque se intensificó durante los últimos años cuando el Gobierno de Karnataka implementó en el área el polémico Proyecto de Ecodesarrollo del Banco Mundial. El plan oficial avanzó, incluso violando las directivas operacionales del mismo Banco con respecto a los Pueblos Indígenas/Tribales, así como también sus derechos constitucionales. El Gobierno de Karnataka ha hecho caso omiso del informe del Panel de Inspección del Banco Mundial que visitó el área y justificó la posición tribal.

Tamil Nadu: Adivasi reocupan su tierra tradicional

En el estado de Tamilnadu, el Adivasi Thannatchikkana Tamizhaga Munnani (Frente Tamilnadu para la Autonomía Adivasi) –un foro de organizaciones adivasi involucradas en la lucha por la autonomía- ha estado apoderándose en silencio de zonas de tierras tradicionales en diferentes partes del estado donde es activo a pesar del hecho de que, a diferencia del adyacente estado de Kerala, no existe ninguna ley que proteja las tierras adivasi de la enajenación o devuelva tierras enajenadas. Tamilnadu Pazhangudi Makkal Sangam (Organización de Pueblos Indígenas de Tamilnadu) y Tamilnadu Pazhangudi Makkal Iyakkam (Movimiento de Pueblos Indígenas de Tamilnadu), un grupo separado del primero, han declarado formalmente la autonomía y la lucha por la tierra como la clave del futuro de los adivasis. Estas organizaciones fueron formadas por activistas del ex Partido Comunista Unido de India, que se fusionó con su organismo madre – el Partido Comunista de India. Se están realizando esfuerzos para forjar una acción conjunta.

Kerala

Cargos de contumacia contra el gobierno por no devolver tierra adivasi

El 6 de diciembre de 2000, cuando la petición de contumacia presentada por el Dr. Nallathambi Thera fue presentada en audiencia, un Tribunal Divisional de la Alta Corte de Kerala, integrado por el Juez P.K Balasubramaniam y el Juez T.M Hassan Pillai, emitió una directiva al Secretario en Jefe del Gobierno, M. Mohan Kumar, para que compareciera en persona el 18 de diciembre para acusarlo de cargos de contumacia por la omisión de cumplir con las directivas del Tribunal de devolver las tierras enajenadas a los tribales. El Tribunal emitió notificaciones a todos los Administradores de Distrito y Oficiales Divisionales de Ingreso (RDOs) para que exhibieran causas de por qué los procedimientos de la Ley de Contumacia no tendrían que ser iniciados contra ellos por violar las directivas. Se les solicitó que presentaran su respuesta antes del 8 de enero de 2001. Antes, en 1993, la Corte había dado directivas a los Administradores y RDOs de devolver las tierras enajenadas a los tribales en los casos donde no había apelaciones pendientes contra las órdenes de los RDOs de devolver la tierra y no era posible pagar compensación. Las directivas fueron emitidas bajo la Ley de Tribus Registradas de Kerala (Restricción sobre la Transferencia de Tierras y Devolución de Tierras Enajenadas) de 1975 debido a una petición presentada por el Dr. Thera para implementar la Ley, por la cual todas las tierras enajenadas desde 1960 tenían que ser devueltas.

La Alta Corte, donde un caso ha estado pendiente desde 1988 por la implementación de la Ley de 1975, acusó severamente al Gobierno de Kerala de "falta de voluntad" para implementar la Ley de 1975, pero ha aceptado repetidamente la solicitud del Gobierno de una extensión de la fecha límite. Como el gobierno no la implementó, el Dr. Thera presentó una petición de contumacia.

El 16 de diciembre de 1999, el Tribunal Divisional integrado por el Juez P.K. Balasubramaniam y el Juez C.S. Rajan, oyendo la petición de contumacia presentada sentenció que el Gobierno de Kerala había cometido desacato de corte y dio otros 5 meses para implementar la Ley de 1975. El Gobierno fue advertido de que si en un plazo de 5 meses no realizaba la devolución de tierras a los adivasis que no eran objeto de compensación y sobre los que no había apelaciones pendientes, el Secretario en Jefe sería punible. El Tribunal también dijo que la Ley de 1999 no podía derogar la Ley de 1975 que establecía que "podía presentarse contra" el Secretario en Jefe una acusación de desacato de corte. El Tribunal observó luego que los procedimientos de contumacia no podían ser abandonados debido al mero hecho de que una nueva Ley –la Ley de Kerala (Restricción sobre la Transferencia y Devolución de Tierras a Tribus Registradas) de 1999 (Ver *El Mundo Indígena* 1998-99) había sido promulgada revocando la Ley de 1975, cuando se prometieron tierras alternativas en cambio de las tierras originales. Además, la misma Alta Corte dio el sobreseimiento de las previsiones contenciosas relativas a las tierras alternativas. Mientras tanto, el 7 de octubre, el Gobierno comenzó a distribuir 225 acres de tierra a las 76 familias tribales y otros 1.200 acres aproximadamente a casi 400 familias tribales en Attapady, en el distrito Palakkad. Estas tierras son tierras excedentes, estériles, inhabitables e incultivables. El 11 de octubre, la Alta Corte emitió una detención interina de la operación de las secciones 5 y 6 de la Ley de 1999, que permitía que se diera tierra alternativa a cambio de la devolución de las tierras enajenadas. El Tribunal dio al gobierno otra oportunidad para implementar las directivas. Sin embargo, el Gobierno apeló a la Suprema Corte y el 7 de febrero de 2000 se le otorgó una detención de los procedimientos de contumacia. Luego, el Tribunal de la Alta Corte desechó el decreto judicial mediante una sentencia del 24 de agosto de 2000, que declaró inconstitucionales las Secciones 5(1), 5(2) y 22 (previsiones discriminatorias contra los tribales) de la Ley de 1999.

Entonces la orden de 1999 sobre la caracterización de cargos de contumacia se hizo final. Al gobierno se le otorgó más tiempo para replicar a los cargos. En forma predecible, el Gobierno de Kerala ahora objetó, frente a la Suprema Corte, la sentencia de la Alta Corte que revoca las cláusulas anti-adivasi de la Ley de 1999 así como el cargo de contumacia.

Desde la aprobación de la Ley en 1975, sólo 5.445.602 hectáreas de la demanda total de 99.094.522 hectáreas han sido devueltas. Junto con las luchas, la batalla legal sigue alargándose y la gente pierde fe, naturalmente, en el sistema judicial. Los líderes adivasi comenzaron otra vez el proceso de volver a lanzar su lucha y esta vez están organizando el apoyo de las organizaciones *dalit*.

Madres solteras - ¿el precio del desarrollo?

Las mujeres de Kerala disfrutan en particular de un estatus social más elevado que las mujeres de cualquier otra parte del país. Esto se atribuye en parte a la tradición matrilineal. Las mujeres adivasi gozaban tradicionalmente de una posición prominente en su comunidad. Sin embargo, su experiencia –el creciente trauma que enfrentan- presenta una vez más una realidad moderna completamente contrastante. Las causas son la colonización de los territorios adivasi y consiguientemente el quebrantamiento del sistema tradicional de autogobierno, junto con la seducción, el engaño, la violencia y la extrema pobreza. Wayanad y Attapady se han convertido en puntos centrales de la protesta sobre el tema de las atrocidades cometidas contra las mujeres adivasi. También se han convertido en infames por lo que se conoce popularmente como las "madres solteras".

Attapady, con sus 25.000 adivasis en 174 chozas, es el segundo poblado después de Wayanad, en términos de población adivasi en el estado. "Namu", una organización de adivasis de Attapady, en una reciente investigación identificó a 378 madres "solteras", la mayoría de las cuales están en el grupo de edad de 18 a 25 años, sólo en 52 chozas. En 1988, el Comité de la Asamblea para el Desarrollo de Castas Registradas/Tribus Registradas se encargó del problema. Aunque el entonces Administrador del Distrito investigó sobre el alegato, no se tomó ninguna acción. Otra vez en 1997, se presentaron 25 casos ante el Comité de la Asamblea, pero no resultó en ninguna acción.

La estimación sobre la cantidad de madres solteras adivasi del distrito de Wayanad va de 300 a 1.000. En un año, desaparecieron 200 mujeres sólo en Wayanad, y unas 20 de las mujeres atacadas sexualmente cometieron suicidio. Trágicamente, la campaña de alfabetización total en Kerala, que movilizó a la juventud alfabetizada, fundamentalmente no-adivasi, para hacer un relevamiento de las aldeas, se convirtió en otra maldición para muchas mujeres adivasi, que cayeron presas de las necesidades sexuales de los jóvenes. Las investigaciones en Thirunelly, en Mananthavady Taluk, de Wayanad, muestran que muchos extraños van con identidades falsas y se casan con las jóvenes, se quedan dos o tres años, tienen hijos con ellas y abandonan la aldea cuándo y cómo les place. Las mujeres pobres son presa fácil de las enfermedades sexuales. A veces se les promete o paga dinero para silenciar el asunto. Otro caso fue el abuso sexual de policías que acampaban en el área durante las operaciones anti Naxalitas (grupo revolucionario marxista leninista) que comenzaron a fines de la década del 60.

La negligencia y complicidad de la policía es un importante factor que contribuye al alto grado de explotación sexual de las mujeres, pues los culpables saben que no les va a suceder nada por los crímenes cometidos aunque sean denunciados a la policía –lo cual no sucede en la mayoría de los casos- o si los medios de difusión convierten a los incidentes en noticias sensacionalistas. Las mujeres que se dirigen a la estación de policía son amablemente aconsejadas, o violentamente amenazadas, a que vuelvan a su casa con sus quejas. Los casos son silenciados. Las investigaciones son adulteradas para proteger a los culpables.

Nordeste de India

En 1991, 8,14 millones de los 67,76 millones de personas tribales de India vivían en los siete Estados orientales. (Las cifras para el 2001 serán publicadas en poco tiempo). La mayoría pertenece a seis importantes grupos mongoloides. Algunos, como los *bodo,* habitan las llanuras pero la mayoría vive en las montañas. Ciertas áreas están dentro del Sexto Registro de la Constitución, el cual reconoce derechos como la propiedad comunitaria de la tierra y bosques, los consejos de distrito autónomos y el derecho consuetudinario. La región tiene también más de 4 millones de indígenas de la India continental, la mayoría de Jharkand, llevados por los británicos para trabajar en las plantaciones de té y como castigo por las rebeliones anticoloniales. Son en su mayor parte analfabetos, sin tierra y sin ninguna influencia en el nordeste, pero no están incluidos en las Tribus Registradas para obtener oportunidades educativas o laborales.

Algunas características de la región causan conflictos y conducen a la violación de los derechos tribales. La mayor parte de las tribus son étnica y culturalmente diferentes de la población india de la parte continental. El Sexto Registro ayuda a algunas de ellas a proteger su identidad, pero incluso éstas no están exceptuados de la tendencia de un importante sector de la dirigencia india a imponerles una cultura uniforme. Además, su economía es controlada por extraños. Eso, combinado con una masiva inmigración, plantea el espectro del desempleo y se agrega a su sensación de ser diferentes. En respuesta, muchas tribus tratan de proteger su identidad proclamando su soberanía. La reacción oficial es tratar estos temas económicos y políticos como un "problema de ley y orden". La respuesta es la represión y se cometen atrocidades. El año 2000 fue testigo tanto de atrocidades como de intentos de lograr la paz.

La Iniciativa de Paz Naga

El alto el fuego firmado con el NSCN (I-M) –uno de los dos principales grupos *naga-* hace tres años dio esperanzas de una paz justa y duradera pues fue alcanzado después de 40 años de lucha, incluyendo un despliegue a gran escala de las fuerzas armadas indias y la participación de Birmania. Pero la otra facción importante, el NSCN (K), fue excluida del alto el fuego hasta abril de 2001. Muchos sienten que, aunque todavía continúan algunos enfrentamientos y el alto el fuego ha significado un cese de hostilidades entre los dos ejércitos, las víctimas civiles no han disminuido aunque la violencia sí ha disminuido considerablemente. (Por más información sobre los recientes acontecimientos en Nagalim ver el capítulo sobre Sudeste Asiático en esta publicación).

Los bodo-kachari

Los bodo de Assam Occidental y los *kachari*, que están emparentados con ellos, conforman un tercio de los tres millones de tribales de Assam. Un sector de ellos demanda la soberanía y el resto quiere un Estado autónomo dentro de India. Hasta la llegada de los británicos, los bodo eran el grupo dominante en gran parte de Assam occidental. Pero ahora han sido obligados a concentrarse en sólo dos distritos del estado. Incluso allí deben competir con otros por la tierra, entre ellos, inmigrantes adivasi. La consecuencia ha sido severas matanzas, siendo las más conocidas las de mayo de 1996, cuando más de 500 individuos de ambos bandos resultaron y se estima que 300.000 quedaron sin hogar. Han habido al menos cinco incidentes de matanzas en el año 2000.

Los bodo tienen dos grupos militantes: el Frente Democrático Nacional de Bodoland, que comenzó como la Fuerza de Seguridad Bodo en los años 80 y se convirtió en el NDFB en 1993, y los Tigres de Liberación Bodo (BLT) formado en 1996 supuestamente bajo la égida del Gobierno de India. También ha estado en guerra y el costo ha sido alto. En marzo de 2000, se firmó un alto el fuego entre el Gobierno de India y el BLT. Pero a pesar de la propaganda pública, no se está tan seguro de que haya sido bienvenido con el mismo entusiasmo como en Nagaland. No hay signos de que el NDFB haya sido invitado a unirse al mismo. Por lo tanto, la lucha continúa, con las consiguientes atrocidades,

Los karachi, su tribu hermana –también conocidos como los *dimasa*– tienen su propio grupo armado, el Dima Halam Daoga. De los varios enfrentamientos del año 2000, el más conocido es el del 13 de agosto cuando militantes dispararon contra las fuerzas de seguridad en la aldea Taijungphang. Como represalia, la Policía de Assam y el Regimiento de Assam atacaron la aldea y violaron a dos mujeres en Dimaimur. Su *gaonbura* (jefe aldeano) fue golpeado y muerto. También hubo saqueos a gran escala de alhajas y otros artículos de valor en la aldea Arulong. Después de muchas protestas, el Sr. Tanu Singh, el Administrador del Distrito, ordenó una investigación. Esta reveló, entre otras cosas, que después de cada incursión, los aldeanos son obligados a trabajar sin paga para las fuerzas de seguridad tres días a la semana. Su sucesor, el Sr. L. S. Changsang, no ha tomado ninguna acción con respecto al informe.

El tema de la inmigración

Los inmigrantes también problematizan a la región. La mayor cantidad proviene de Uttar Pradesh, Bihar y Jharkand. Otro importante sector viene de Bangladesh. La mayoría de estos últimos son musulmanes, los primeros son principalmente hindúes. Existe resentimiento entre ambos grupos. Pero la atención oficial se centra en los últimos. Da al tema un tinte religioso. Uno se pregunta si se hacen esfuerzos para dividir a los bodo y a otros grupos en torno a la religión. Otro ejemplo es la polémica sobre sí los bodo deberían aceptar la escritura hindú o la romana. Su convención literaria celebrada durante el verano de 2000 aceptó el alfabeto hindú. Aunque la división no es religiosa, es presentada como una división cristiano-hindú. Hay temor de que también se produzcan matanzas debido a la religión.

Los *karbi* de Karbi Anglong, Assam, que limita con Nagaland, son otra tribu que resiste toda inmigración, no solamente la de Bangladesh. Unas 70 personas, tanto inmigrantes como karbi, fueron muertas en su región entre junio y agosto de 2000. Los inmigrantes muertos eran en su mayoría de Bihari y Nepali.

La cuestión de la inmigración es mucho más severa en Tripura, donde los tribales constituían más del 70% de la población a comienzos de siglo XX, 56% en 1951 y solamente alrededor del 28% hoy debido a la gran inmigración de Bangladesh. Sin embargo, raramente se los refiere como inmigrantes debido a que la mayoría es hindú. Los tribales han estado resistiéndolos y han formado un grupo militante, el Frente de Liberación Nacional de Tripura. Los medios de difusión los acusan de ser inspirados por misioneros. Sin embargo, los cristianos constituyen menos del 2% de la población del Estado y cerca del 5% de los indígenas. Durante el año 2000, los bengalíes formaron a su vez un grupo. Ha habido varias muertes y se puede esperar que la violencia continúe.

La masacre de Manipur

Un tercio de la población de Manipur es tribal, predominantemente naga, pero también incluye a otros como los *kuki*. El conflicto naga-kuki ha llamado la atención de los medios durante muchos años. Los kuki están supuestamente armados por el ejército indio. La lucha era primariamente por el control de la tierra y el comercio limítrofe con Birmania. El tema parece haberse solucionado y hoy hay una paz relativa. Pero se estima que Manipur tiene 18 organizaciones militantes pertenecientes a grupos étnicos diferentes. Así que los conflictos y las atrocidades continúan.

Un ejemplo fue la masacre del 28 de diciembre de 2000, durante la cual fueron muertos ocho hombres en Tabanglong, una aldea naga en la Autopista Tamenglong-Imphal. El equipo investigador descubrió que una patrulla del 15º Regimiento Jat fue atacada por personas sospechosas de ser militantes a eso de las 7 de la mañana del 28 de diciembre de 2000, a unos 200 metros de la parada de autobús de la aldea de Tabanglong. Un soldado fue muerto y cuatro fueron heridos. A las 11 de la mañana del mismo día, personal del 15º Regimiento Jat llegó a Tabanglong. Cuando llegaron a la aldea, había sólo diez hombres y dos comerciantes de chile *meitei*, que estaban escondidos en la aldea después de haber oído los disparos. El ejército obligó a los hombres a reunirse en la cancha de voleibol y los golpeó.

Luego, los soldados obligaron a cinco de ellos a tirarse al piso boca abajo abriendo fuego y matándolos. Un hombre sobrevivió con una herida de bala. Dos hombres fueron obligados a sentarse cerca de una piedra ceremonial y fueron muertos a tiros. Un joven mentalmente retardado y otro hombre fueron obligados a sentarse en el camino cerca de la iglesia y les dispararon. Afortunadamente, el último escapó saltando hacia abajo y corriendo hasta los arbustos cercanos. Antes y durante la matanza, las mujeres y los niños fueron mantenidos en diferentes casas y no se les permitió salir. Después de la matanza, el ejército llevó a las mujeres y los niños a la iglesia y los detuvo durante el resto del día. Al anochecer, un equipo policial fue a la iglesia y preguntó a las mujeres y los niños sobre el incidente y las identidades de los muertos. Eso fue lo primero que oyeron sobre las muertes. Entonces se ordenó a los aldeanos acompañar a la policía para ubicar los cadáveres e identificar a sus familiares.

Todas las personas muertas por el ejército eran personas de edad, aldeanos inocentes, comerciantes de chile y un joven retardado. No había signos de enfrentamiento en la aldea. Por lo tanto, fue un ataque unilateral del ejército, 4 o 5 horas después del ataque al ejército por personas sospechosas de ser militantes armados. Ni el ejército ni la policía recuperaron ningún documento incriminatorio, armas o municiones en Tabanglong en el momento del incidente.

Fuentes

Reunión celebrada el 14 de julio de 2000 en el Centro de Ciencias Ecológicas, Bangalore.
Kothari, Ashish 2000. An Exercise in Conservation. *Frontline*. feb. 2, 2001.
World Rainforest Movement. *Bulletin* Nº 38, septiembre 2000.
Newsletter, Issue 3, septiembre 2000.
Contribuciones de Xavier Dias.
Contribuciones de Bela.
Contribuciones de Stan Swamy.

Sobre el Nordeste de India

Anónimo, (sin fecha). Peace Initiatives among the Nagas.
Dubey, Amaresh y Shubhashis Gangopadhyay, 1998. "Turbulent Intelligence," *The Telegraph*, marzo 23.
Fernandes, Walter, 1999. "Conflict in North-East: A Historical Perspective," *Economic and Political Weekly*, 34 (n. 51, dec. 18-24), pp. 3579-3582.
Datta Ray, B. et al. (eds). *Population, Poverty and Environment in North East India*. New Delhi: Concept Publishing Company.
Hazarika, Sanjoy, 1994. *Strangers of the Mist: Tales of War and Peace from India's North East*. Viking Penguin Books.
Mukerjee, Sanu et al. (eds). *Demographic Profile of North-East India*. Nueva Delhi: Omsons Publications, pp. 1-7.
Pakem, D. (ed). *Insurgency in Northeast India*. New Delhi: Omsons Publications.
Report of the Joint Fact Finding Team on Tabanglong Massacre on 28th December 2000.

SRI LANKA

Mujeres wanniyala-aetto son traficadas a países petroleros árabes

El pueblo cazador / recolector *wanniyala-aetto* sobrevivió a los colonizadores cingaleses, tamiles, portugueses, holandeses e ingleses retirándose a lo profundo del *wanni*, bosque tropical de zona seca. Sin embargo, el impacto más crítico sobre sus vidas es más reciente. En 1983 fueron trasladados del bosque para dejar lugar a la creación de un parque nacional. Sus medios de subsistencia tradicionales cazadores / recolectores fueron prohibidos. Si cruzaban el límite del parque nacional, eran detenidos. Los guardias del parque incluso mataron a algunos de ellos. El gobierno ubicó a los pueblos del bosque en aldeas de rehabilitación "Sistema C", en un área de desarrollo. Al habérseles sacado sus tierras boscosas y al prohibirse su estilo de vida, sus mujeres son vendidas ahora como trabajadoras a otros continentes. Aquellas que son seleccionadas son principalmente mujeres jóvenes, las pocas en edad reproductiva (unas 380 mujeres) de las cuales depende, en última instancia, la supervivencia de los wanniyala-aetto. Estos no están bien preparados para enfrentar esta nueva amenaza. Ninguno de sus mitos, leyendas o narrativas relatan sobre tráfico humano, abuso sexual o los burdeles en los cuales las mujeres contratadas como trabajadoras pueden terminar.

Las siete primeras mujeres wanniyala-aetto contratadas como trabajadoras fueron entregadas en las casas de sus empleadores a comienzos de febrero del año 2001. Las jóvenes fueron dispersadas en diferentes ciudades. La reclutadora local es una cingalesa, hija del dueño de un despacho de alcohol del área. Ella recibe 7.000 rupias (un poco menos de US$80) por mujer. Esta es una suma considerable en Sri Lanka (hay que compararla con el salario de 6.000 Rs. de un maestro escolar del gobierno). La hija del dueño de la tienda cree en las descripciones laborales presentadas por los agentes de la capital. El futuro de las jóvenes en una sociedad en desintegración parece poco prometedor comparado con la vida en Kuwait, Bahrein, Riyadh o Dubai. Firmar el contrato de dos años o cinco años como empleadas domésticas les permitirá usar saris de seda con bordados de oro, muchos adornos de oro y collares de joyas todos los días, una alternativa tentadora para una joven de una Aldea de Rehabilitación del gobierno.

Una vez que el reclutador local tiene un grupo de cinco a seis mujeres, llega un minibus para llevarlas de sus hogares forestales a la capital. El primer minibus llegó a la aldea sin aviso previo a las once de la noche. Las jóvenes tuvieron que partir inmediatamente. Siete horas más tarde llegaron a Colombo, la capital. Allí tuvieron que aguardar otro vehículo que las transportó los últimos kilómetros hasta una casa privada donde los agentes evalúan su mercadería humana. Esto lleva de tres a cinco días. Hasta ahora nadie tuvo la oportunidad de contar qué es lo que sucede allí dentro.

Joven madre con su hijo cocinando en su medio tradicional Wanniyala-Aetto. Fotos: Wiveca Stegeborn

De acuerdo al Fiscal de la Suprema Corte, Sr. Tampoe, en Sri Lanka la explotación, tanto sexual como laboral de las trabajadoras con contrato ha funcionado durante muchos años. Su trabajo es un "pilar" (Tampoe 2001a) de la economía de Sri Lanka, dice y continúa: "Los Grupos de Mujeres (privados) han estado pidiendo a gritos una reforma del sistema durante décadas" (Tampoe 2001b). Es difícil obtener datos estadísticos sobre el comercio ilícito. Sin embargo, se ha logrado obtener alguna documentación que expone el involucramiento del gobierno de Sri Lanka. Algunos documentos de seguros con el sello del Buró de Empleo Extranjero (BFE) revelan "Tasas de Reclutamiento" de 5.000 Rs. por persona pagadas al mismo Buró. Antes de ser empleadas, las jóvenes tienen que firmar un contrato con una Oficina Reclutadora en Arabia Saudita. Los contratos son firmados con impresiones dactilares con el agregado de los nombres escritos en ortografía romana. El contrato está escrito en mal inglés con un encabezamiento en árabe. Los wanniyala-aetto no saben leer ni escribir, ya sea en inglés o en árabe. Para citar la última frase:

> *Por la presente Acuerdo Pagar Rs. 35.000.- por gastos de visa, pasaje y otras expensas pertinentes, también he acordado no Negarme a Trabajar bajo ninguna Circunstancia y me haré cargo de todas las expensas sí así lo hago* (Oficina de Reclutamiento Sahman [los errores ortográficos en inglés en el documento original]).

Control de natalidad

Aunque las transacciones parecen arbitrarias y súbitas, están muy bien preparadas. Tan pronto como las jóvenes están enlistadas, tienen que buscar, *por propia iniciativa,* un hospital en Colombo para someterse a un control físico de salud y una consulta con "Planificación Familiar". "Planificación Familiar" en India y Sri Lanka significa generalmente esterilización. No obstante, hoy existen alternativas, como una inyección de hormonas que dura cinco años o una ampolla artificial subcutánea insertada en la parte superior del brazo. Las ampollas emiten hormonas diariamente durante cinco años para impedir el embarazo. Se dice que la razón de esta acción "voluntaria" es impedir el embarazo cuando las jóvenes vuelvan a casa en vacaciones.

De la cocina al microondas

Una vez que las jóvenes son dispersadas en África o en la península arábica, no pueden huir ni comunicar a nadie en casa su paradero. Muchas no pueden escribir en ortografía cingalesa, mucho menos en otras formas de escritura. Incluso si las mujeres del bosque tropical de monzón se convierten en empleadas domésticas y nada más, existen severos obstáculos para su capacitación. Los wanniyala-aetto hablan una lengua casi extinta que pocos extraños entienden en su propio país, mucho menos en Medio Oriente. Pueden entender cingalés siempre y cuando sea simple. La capacitación y transmisión del conocimiento doméstico son problemáticas porque las mujeres wanniyala-aetto son criadas en condiciones de vida muy diferentes. Cocinan sobre el fuego abierto y recogen leña del bosque o de sus campos swidden. Comparado con sociedades que tienen el PBN más elevado del mundo, la transformación, aunque voluntaria, debe ser ardua. Según el Buró de Empleo en el Extranjero de Sri Lanka, algunas mujeres de Sri Lanka en el Medio Oriente han sido "sometidas a vejámenes porque no están familiarizadas con el trabajo que se espera de ellas y les falta capacitación" (A.M.J. Perera, 2001).

Una investigación

El gobierno de Sri Lanka fue contactado a través de la Embajada de Sri Lanka en Suecia a comienzos de febrero. Se adjuntaron los nombres de dos reclutadores y la dirección y la agencia de viajes usada en la primera entrega. La Embajada de Sri Lanka respondió con el silencio. El contacto fue renovado y se recibió una austera respuesta que decía que el asunto había sido pasado al Ministerio de Relaciones Exteriores de Sri Lanka, el cual realizaría una investigación.

Mientras tanto, trabajadores por los derechos humanos están investigando líneas aéreas con destinos en el Medio Oriente, al Buró de Empleos en el Extranjero y la Oficina de Emigración. Lo que tratan de establecer es si los documentos de viaje y los pasaportes son legales. Cuando se le preguntó al Superintendente de Policía y Director del Buró de Niños y Mujeres, Sra. P. Diwakara, sobre la posibilidad de que la policía detecte mujeres wanniyala-aetto en el aeropuerto, respondió que había varios incidentes que señalaban hacia documentos falsificados y tráfico ilegal (Com. pers. con Sr. M. Cardillo, feb. 20, 2001).

Una campaña de toma de conciencia

El Movimiento Internacional Contra todas las Formas de Discriminación y Racismo (*IMADR*), una ONG de Sri Lanka que trabaja contra la exploración de las mujeres en el extranjero, decidió organizar una campaña de toma de conciencia en Mahaiyangana, el pueblo más cercano a los asentamientos wanniyala-aetto. Visitar el pueblo en vez de las aldeas ayuda a que la gente tome conciencia a un nivel más amplio. Al celebrar la reunión allí, el IMADR alcanzará a reclutadores locales de mujeres indígenas para llevarlas a la capital, al personal hospitalario, la policía local y, lo que es más importante, a las mismas mujeres wanniyala-aetto, quienes están siendo informadas sobre el evento. Una vez que el asesoramiento haya sido difundido en lo medios de difusión, se planea una visita de seguimiento a Dambana, la mayor aldea wanniyala-aetto. Las familias que han perdido sus hijas pueden entonces solicitar ayuda para rastrearlas.

Mientras tanto, ignorando de hecho que los Días Dorados puedan terminar muy pronto, la reclutadora sigue yendo de puerta en puerta en las aldeas wanniyala-aetto. Una nueva lista está creciendo. Esta vez incluso la nieta del fallecido jefe legendario Uru Warige Tissahamy está esperando el vehículo nocturno.

Referencias

Cardillo, Maurizio, 2001. Febrero 20. E-mail en posesión del autor.

Perera, A. M. J., 2001. Febrero 7. "Lankan maids suffer abuse in Gulf." En *Hindustan Times.*

http://www.hindustantimes.com/nonfram/080201/detFOR13.asp

Sahman Recruiting Office, 1999. Julio 21. Contract from Saudi Arabia. Documento en posesión del autor.

Tampoe, Arun, 2001a. Abril 3. E-mail. Documento en posesión del autor.

2001b. Abril 4. E-mail. Documento en posesión del autor.

ASIA DEL ESTE Y SURESTE

BEST COPY AVAILABLE

ASIA DEL ESTE Y SURESTE

JAPON

El establecimiento de una agencia de ayuda a las víctimas de las violaciones de los derechos humanos y el reconocimiento del pueblo ainu

El Ministro de Justicia japonés está haciendo los preparativos para el posible establecimiento de una agencia de ayuda para las víctimas de violaciones de los derechos humanos, la cual dependerá del gobierno mediante la creación de un organismo asesor, llamado Mesa Redonda para la Promoción de los Derechos Humanos. El gobierno ha reconocido que es necesario estudiar la factibilidad del establecimiento de medidas para ayudar a las víctimas de las violaciones de derechos humanos. De acuerdo a la investigación, se dieron dos razones para el establecimiento de la nueva agencia.

La primera es la comprensión del ministro de que *"existen violaciones de derechos humanos como la discriminación irracional basada en el estatus social, familia, origen, raza, creencia, sexo y otros factores, incluso hoy"*. Esto refleja el hecho de que el sistema existente de los Comisionados para las Libertades Civiles no ha funcionado efectivamente para poner fin a los incidentes discriminatorios.

La segunda razón dada para el establecimiento de la agencia es que *"han aparecido diversos factores nuevos, con el desarrollo de una sociedad más internacionalizada, de población de mayor edad, orientada hacia la información"*. Esto se puede entender que como la imposibilidad de la sociedad japonesa de ajustarse a los cambios, lo que ha provocado nuevos problemas sociales como aquellos conectados con el rápido aumento de extranjeros residentes en Japón o la circulación de calumnias e información discriminatoria, como la Lista de las Comunidades Buraku vía Internet. Además, puede decirse que el gobierno japonés teme quedar aislado de la comunidad internacional si no logra crear los sistemas legales necesarios para encarar las violaciones de los derechos humanos.

Como declaró el Ministro, *"el gobierno de Japón ha implementado varias medidas, como la ratificación de varios convenios internacionales en su calidad de miembro de la comunidad internacional"*. El gobierno ha ratificado el Convenio Internacional sobre Derechos Económicos, Sociales y Culturales (1979), el Convenio Internacional sobre Derechos Civiles y Políticos (1979), el Convenio sobre la Eliminación de Todas las Formas de Discriminación Contra la Mujer (1985), el Convenio sobre los Derechos del Niño (1994) y el Convenio Inter-

BEST COPY AVAILABLE

nacional sobre la Eliminación de Todas las Formas de Discriminación Racial (1996).

En respuesta al Convenio sobre la Eliminación de Todas las Formas de Discriminación Contra la Mujer, se promulgó la Ley sobre la Igualdad de Oportunidades de Empleo y la Ley sobre la Prevención del Acoso Sexual, y en respuesta al Convenio Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial se promulgó la Ley de Promoción de la Cultura Ainu. Sin embargo, estas leyes fueron aprobadas principalmente para mantener la imagen internacional del gobierno. La falta de discusión de las bases y de consultas a la sociedad japonesa hace que las violaciones de esas leyes no hayan cesado.

Los Comisionados para las Libertades Civiles, nominados por asambleas locales, tienen la responsabilidad de responder a los incidentes discriminatorios. Sin embargo, los comisionados no tienen poder para investigar o hacer recomendaciones como respuesta a un incidente discriminatorio sin la cooperación voluntaria de todas las partes involucradas. Las decisiones de los comisionados no tienen ninguna fuerza legal. En la investigación de 1999 sobre la situación del pueblo *ainu*, la cantidad de personas que informaron sobre incidentes discriminatorios había aumentado. Lo obsoleto de este sistema ha sido señalado desde su comienzo.

Además, las Naciones Unidas han subrayado la necesidad de una agencia independiente de derechos humanos debido a las crecientes violaciones de derechos humanos en las oficinas de inmigración del gobierno, las cárceles e incluso en la policía. Es de apreciar que el Ministro de Justicia tomara la decisión de establecer una nueva agencia para las víctimas de los derechos humanos. No obstante, se han expresado muchas preocupaciones en cuanto a qué tipo de agencia será y qué poderes detentará:

Primero, el Comité de Derechos Humanos que aceptará las quejas de las víctimas y tomará decisiones sobre recomendaciones, órdenes o investigaciones, será establecido en Tokio, no en las regiones.

Segundo, no es seguro que el Comité de Derechos Humanos incluya miembros de los sectores victimizados.

Tercero, el mandato del Comité de Derechos Humanos todavía no ha sido definido claramente, aunque el Comité necesita tener poderes lo suficientemente amplios para investigar la discriminación gubernamental interna relacionada con el poder público, como por ejemplo en la policía u oficinas de inmigración.

En cuanto al pueblo ainu, la Mesa Redonda para la Promoción de los Derechos Humanos, como todas las agencias gubernamentales, usa el término japonés "Ainu no hitobito" (personas de ascendencia ainu), evitando el término "el pueblo ainu". En suma, se está tomando la posición de no reconocer la existencia de los ainu como pueblo indígena. Aunque se ha incluido a personas de ascendencia ainu como una de las categorías de víctimas de violaciones de derechos humanos, no se ha encarado las raíces de estas violaciones como discriminación racial.

Ahora, el pueblo ainu tiene que examinar los casos de discriminación para decidir en qué está basada esta discriminación y qué formas de discriminación sufre. Es necesario analizar minuciosamente la conciencia discriminatoria, social e históricamente formada, por la cual los conquistadores consideran al pueblo conquistado como "atrasado", "inferior" y "que mejor es asimilarlo". Es imposible responder adecuadamente a la discriminación del pueblo ainu si no se reconoce que esta forma de discriminación es la discriminación de un pueblo indígena conquistado. Mientras que el gobierno mantenga este enfoque engañoso con respecto a los grupos étnicos como los ainu de Hokkaido o el pueblo *ryukyu* de Okinawa, la respuesta a los incidentes discriminatorios estará lejos de ser apropiada.

El gobierno japonés ya presentó el primer y segundo informe al Comité sobre la Eliminación de la Discriminación Racional en conformidad con el Convenio Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial y el mismo fue considerado en marzo de este año. El gobierno ha demostrado su dualidad al usar diferentes términos para los ainu en las versiones japonesas y las inglesas de los informes. Todas las versiones japonesas usan el término "Ainu no hitobito", por el cual los ainu no son reconocidos como pueblo distinto. En los primeros informes en inglés, el gobierno demostró su incertidumbre al usar el término "el pueblo de Ainu", lo cual tiene un significado muy poco claro.

En respuesta a la presión internacional, el gobierno usa ahora el término "el pueblo ainu" en la versión inglesa. No obstante, la versión japonesa todavía mantiene "Ainu no hitobito". A pesar del cambio de terminología en los informes en inglés, la negativa del gobierno a usar el término "Ainu minzoku" (pueblo ainu) muestra claramente su falta de voluntad política para reconocer a los ainu como un grupo étnico indígena y, por lo tanto, para aceptar sus derechos colectivos y su derecho a la autodeterminación.

La promulgación de la llamada "Ley de Promoción de la Cultura Ainu" en 1997 debe también considerarse, en gran medida, como un intento de parte del gobierno japonés para mantener una imagen positiva en la comunidad internacional. Sin embargo, esta ley es muy vaga en su definición de la cultura ainu. De acuerdo al concepto del gobierno, "cultura" comprende sólo aspectos como la lengua, ceremonias o artesanías, y no incluye la visión del mundo o los estilos de vida de los pueblos indígenas.

El aumento de las actividades relacionadas con la cultura ainu y una toma de conciencia en Hokkaido de que los ainu son un pueblo distinto, con una cultura única y valiosa, a pesar de que sus expresiones sean limitadas a actividades culturales e investigación, ha sido un aspecto positivo de la nueva ley. En una reciente audiencia pública celebrada en Sapporo por la Mesa Redonda para la Promoción de los Derechos Humanos, representantes de varias ONGs que representan a grupos discriminados se unieron para testificar sobre la situación de discriminación en sus áreas. Es de esperar que estos grupos, en un esfuerzo conjunto, sean capaces de presionar al gobierno japonés para que haga de la propuesta agencia de ayuda a las víctimas de las violaciones de los derechos humanos una herramienta efectiva para salvaguardar los derechos humanos en Japón.

CHINA

La campaña "Hacia el Oeste" de China

Durante los dos últimos años, el gobierno chino introdujo un cambio estratégico en la política de desarrollo del país. La estrategia, que es llamada "La gran apertura de las regiones occidentales" (*Xibu da kaifa*), o "Hacia el Oeste" para abreviar, es de interés vital para muchos de los pueblos minoritarios de China. Sin embargo, su voz apenas se oye entre el clamor que emana de los diferentes grupos de interés que pugnan por un desarrollo de las regiones occidentales de China.

Históricamente hablando, China ha oscilado entre períodos de contacto marítimos y períodos de repliegue continental. La apertura del Camino de la Seda, hace más de dos mil años, fue seguida por un prolongado período de desarrollo de las relaciones marítimas con el Sudeste de Asia, hasta que la gran dinastía Tang (618-907) volviera a dirigir, una vez más, la atención hacia el continente. Sin embargo, esto no significa que los Tang miraban hacia adentro. Por el contrario, fue el primero y único verdadero período cosmopolita, y los chinos de mentalidad abierta todavía aprecian el período Tang precisamente por eso. Los períodos Song y Yuan –el último dominado por los mongoles- fueron, otra vez, orientados hacia el mar. Luego vinieron los Ming (1378-1644) y los Qing (1644-1912), que se concentraron en la política continental. La notable excepción fueron las espectaculares expediciones chinas al Mar del Sur de la China y al Océano Índico hasta la Península Arábica y la Costa Oriental Africana a comienzos del siglo XV. El comandante de estas expediciones, Zheng He, era un musulmán de Yunnan, en China suroccidental.

Comenzando a mediados del siglo XIX, China se volvió otra vez a orientar hacia el mar, pero esta vez el enfermizo imperio fue forzado por los crecientes poderes coloniales occidentales y luego también por Japón. Durante el período de la República Popular, también se podría decir que China cambió la orientación. En la primera parte del período, el país se "inclinó" hacia Rusia, mientras que los últimos veinte años han contemplado una continua orientación marítima, un cambio que fue iniciado por el mismo gobierno chino y no impuesto al mismo, como en el siglo XIX. El actual cambio de estrategia puede no ser considerado un cambio dramático de orientación en el sentido de que China está otra vez en el proceso de dar su espalda al mar sino que puede ser considerado como un esfuerzo *para hacer las dos cosas al mismo tiempo.*

Sin embargo, hay implicaciones más amplias que llegan más allá de las fronteras Chinas, es decir las relaciones más estrechas que se han desarrollado durante los últimos diez años entre China y cuatro estados que tienen fronteras comunes con China en Asia Central: Rusia, Kazakhstan, Kyrgyzstan y Tayikistán, los llamados "Cinco de Shanghai", llamados así después de su primera conferencia en Shanghai hace algunos años. La situación en estas regiones es diferente de lo que era en la época soviética, porque las élites gobernantes de estos países enfrentan todas un malestar étnico en sus respectivos países. Por lo tanto, estas élites han desarrollado un interés común en sofocar las tensiones étnicas, lo cual en muchos casos implicaría actividades transfronterizas.

Además, las mejoradas relaciones entre China y Rusia, que han sido caracterizadas por los socios como una "relación estratégica", puede contribuir a empujar a China una vez más hacia una orientación más continental. Pero queda por verse hasta qué medida esto está basado en intenciones reales y cuánto está basado en consideraciones tácticas en el juego global entre estos dos poderes y los EE.UU. De cualquier manera, puede igual de fácil contribuir a empujar a Rusia hacia China y no lo contrario, lo cual ha sido el modelo establecido.

La región, considerada como parte del oeste de China, es realmente enorme. Cubre diez provincias y regiones autónomas chinas. En el noroeste, tenemos a Shaanxi, partes de Mongolia Interior, Gansu, Ningxia, Qinghai y Xinjiang, y en el sudoeste tenemos a Sichuan, Guizhou, Yunnan y Tíbet. Algunos también agregarían la provincia meridional de Guangxi. Esta región cubre más de la mitad del territorio chino, con una población de más de 300 millones de personas. Cuenta con la mayor parte de las reservas minerales y petrolíferas del país y es de una gran importancia estratégica, ya que comprende la mayor parte de las fronteras chinas. Finalmente, comprende a casi todas las regiones minoritarias de China, incluyendo las cinco regiones autónomas a nivel provincial: Xinjiang (*uighur, hui, kazakh, kirgiz*, etc.), Ningxia (*hui*), Mongolia Interior (*mongoles*), Tíbet (*tibetanos*) y Guangxi (*zhuang*, etc.).

Ha habido una embestida de los estratos dirigentes de estas provincias para obtener su parte de las inversiones públicas que están lloviendo sobre la región. Algunos temen que la mayoría de los recursos quedarán retenidos en las populosas provincias chinas han como Sichuan y Shaanxi. Otros temen que no será más que otra oportunidad para que los burócratas se enriquezcan mediante la corrupción, pero el punto decisivo en la mayoría de los casos es que son los chinos han locales quienes deciden sobre estos asuntos, y no los pueblos indígenas.

Y las sumas son ciertamente enormes. La fase actual está caracterizada por proyectos de infraestructura, como un gasoducto que vincula los campos de gas natural de Xinjiang con Shanghai. El ferrocarril desde Ürümqi a Kashar en Xinjiang, de 1.000 Km de largo, fue terminado en 1999 y está en construcción una nueva línea de ferrocarril que va de Golmund en Qinghai hasta Lasa. Esta será la línea de ferrocarril más elevada del mundo, con una longitud total de unos 1.100 Km.

Se ha construido un nuevo camino que va de norte a sur a través del vasto desierto de Taklaman en Xinjiang y, desde la capital de Xinjiang, Ürümqi, se está construyendo una autopista de cuatro carriles hacia el oeste, hacia Kazakhstan, financiada por el Banco Mundial. El mayor proyecto de ingeniería tiene lugar en la parte nordeste de Xinjiang, donde el agua del río Ertix es encauzada y redirigida para suministrar agua a ciudades como Ürümqi y Karamay.

Las autoridades chinas pueden entonces tener buenas razones para desarrollar estas vastas regiones, para que sus riquezas sean más accesibles y asegurar un desarrollo más equilibrado entre las ricas provincias costeras y el vasto interior de China. La lógica ideológica para esta jugada está expresada en dos típicas consignas chinas. La primera es "los dos que-no-se-abandonan" (*Liangge libukai*), que significa simplemente que los chinos han no pueden prescindir de los pueblos minoritarios y éstos no pueden prescindir de los chinos han. El mismo Mao Zedong, en su tiempo, dio una versión más directa de la misma idea cuando dijo que los méritos de los chinos han son su gran población y sus habilidades, mientras que los méritos de los pueblos minoritarios son sus grandes extensiones de tierra y sus enormes recursos.

La segunda consigna para la campaña "Hacia el Oeste" proviene del pensamiento de Deng Xiaoping sobre la forma en que se tendría que desarrollar China, y es llamada "las dos grandes perspectivas generales" (*Liangge da ju*). La primera de estas perspectivas se refiere a la estrategia de Deng de dejar que las regiones costeras se adelanten y se enriquezcan y que estas regiones, a su vez, apoyen a las regiones del interior a hacer lo mismo. Este plan, que las autoridades centrales están tratando de implementar ahora es considerado con las palabras del líder partidario Jiang Zemin, como "una revitalización del pueblo chino".

Sin embargo, además de estas tradicionales consignas compulsivas, el tema es mayormente discutido en contextos que están libres de trampas ideológicas. En primer lugar, ha encendido principalmente un tipo de espíritu "pionero" chino, que juega con la imagen tradicional china de estas regiones occidentales como inhospitalarias y prohibitivas mientras que al mismo tiempo las presenta como las tierras de El Dorado. Es característico que el término "desarrollo" (*fazhan*) no sea aplicado en este contexto sino más bien el término "apertura" (*kaifa*). La prensa china ha discutido lo que se puede aprender del desarrollo en otros países que son considerados similares, como la expansión rusa en Siberia y la expansión americana hacia el oeste en el siglo XIX (sic).

El punto clave es que los pueblos minoritarios no son casi mencionados y apenas son audibles en este clamor por abrir el oeste. Se han elevado algunas voces preocupadas, por ejemplo, diciendo que tienen que considerarse los derechos legales de los pueblos minoritarios en estas regiones. Pero en su conjunto, la perspectiva de grandes proyectos tecnológicos eclipsa completamente los temas étnicos. La única área en que las voces étnicas son oídas es la del turismo por la perspectiva de presentar a las regiones minoritarias como valiosas cuidadoras de un turismo ecológico. Pero por el resto, los planes parecen ser trazados para beneficiar a los han tanto a nivel local como nacional.

Los planificadores chinos han parecen creer que el desarrollo de la región también contribuirá al desarrollo de las economías de los pueblos minoritarios. Este aspecto es por cierto importante porque, si se realiza bien, puede resultar en la vinculación de la élite de los pueblos minoritarios crecientemente influyente, política y económicamente, a estos planes de desarrollo. También se ha hablando de hacer uso de los uighur de Xinjiang, quienes son excelentes comerciantes, como una fuerza desarrollista pivote en un contexto regional centroasiático.

No existen dudas de que una campaña para desarrollar las regiones occidentales de China conducirá a mayores conflictos étnicos en el corto plazo. Los planes para abrir estas regiones están, por lo tanto, sujetos a un escrutinio minucioso por los planificadores militares regionales en Lanzhou, en Gansu, centro del comando militar para las vastas regiones del noroeste.

Durante los últimos años, ha habido menos choques armados entre los uighur y los chinos han, aunque parece claro que los uighur han entrenado en guerra de guerrillas a los grupos fundamentalistas en Paquistán y a los *taleban* en Afganistán. Los dos incidentes en Xinjiang que han provocado más preocupación recientemente son el arresto de la prominente mujer uighur Rebiya Kadeer y la muerte por tortura del activista político Abduhelil Abdulmejit.

Kadeer, quien es una de los "nuevos ricos" entre los uighur, fue arrestada en la primavera de 2000 y sentenciada a ocho años de prisión por revelar, supuestamente, secretos de estado al haber enviado por correo periódicos locales a su esposo, exiliado en los Estados Unidos. El arresto causó bastante revuelo, también entre las mujeres uighur en Kazakhstan y Kyrgyzstan, porque Kadeer era conocida por sus proyectos filantrópicos y había servido en comisiones gubernamentales de alto nivel en Xinjiang. Abduhelil Abdulmejit fue acusado de ser el cerebro tras los violentos disturbios en Yili en 1997 (ver *El Mundo Indígena 1997-98*, pp. 187-88). El 17 de octubre del año 2000 murió en prisión como resultado de las torturas de la policía china.

Informes más recientes alegan que las comunidades musulmanas en Gansu, Ningxia y Shaanxi, más al este, están inquietándose. El grupo étnico en cuestión es el de los hui, quienes frecuentemente son llamados los "chinos musulmanes" debido al hecho de que hablan chino pero son musulmanes. Desde el punto de vista histórico, son un resultado del casamiento entre comerciantes centroasiáticos y mujeres chinas. Su proximidad a las regiones chinas han no los predispusieron más a la asimilación cultural. Por el contrario, algunos de los disturbios étnicos más violentos de China se han originado en estas áreas, el último en los años '30, encabezado por el legendario Ma Zhongying.

Incluso la provincia oriental de Shandong ha sido el lugar de choques mortales entre hui y la policía china. En diciembre de 2000, la policía disparó contra una multitud de unos 2.000 manifestantes hui en el centro del condado, Yangxin, un incidente que fue informado en la prensa china. Se dijo que la mayoría de los musulmanes involucrados provenían del condado Mengcun en la vecina provincia de Hebei. Las tensiones han crecido después que el dueño de una tienda han en Yangxin publicitó la venta de "cerdo islámico", lo que ocasionó su muerte así como la de otros han. Más tarde, se encontró la cabeza de un cerdo colgando delante de la mezquita local. El resultado de estos incidentes fue que el presidente del partido comunista de Shandong, el jefe de la administración y el jefe de policía del Condado Yangxin fueron expulsados pero muchos musulmanes consideraron que el gobierno debería hacer algo más que convertir a estos funcionarios en chivos expiatorios de los incidentes.

TAIWAN

¿El final histórico de la tierra indígena?

La última revisión de la "Reglamentación sobre el Desarrollo y Manejo de la Reserva Indígena" (la Reglamentación) fue realizada a fines del año 2000 por el Ministerio de Asuntos Internos. La Revisión continuó con el tema de "la adquisición y desarrollo de reserva indígena por personas no-indígenas" y ahora ha sido enviada al Consejo Aborigen para consulta. Encontramos un interés excepcionalmente bajo en lo relativo a la revisión de la Reglamentación en el punto clave que decide el futuro de la reserva indígena. Este tipo de silencio anormal puede ser una actitud deliberada por parte de aquellos que quieren beneficiarse con la revisión.

La Reglamentación fue aprobada por primera vez en 1948. (En ese entonces se la llamó "Reglamentación sobre el Desarrollo de las Reservas Montañosas de todos los Condados, Taiwan"). Durante los 50 años pasados ha sido revisada seis veces. Cada revisión subrayó que la reserva debería proteger los medios de subsistencia de la población indígena pero, en realidad, fue a través de estas revisiones que el gobierno no detuvo el desarrollo del área montañosa por personas no-indígenas y sacrificó los derechos indígenas. Aunque la Reglamentación ha insistido formalmente en el derecho único de la población indígena sobre la reserva, hay numerosos casos de compras ilegales de tierra de la reserva que no han sido resueltos. Y ni siquiera sabemos exactamente la cantidad de casos según la investigación oficial. Las seis "certificaciones" a gran escala que legitimaron el usufructo ilegal de tierras de reserva por personas no-indígenas resultaron en que los pueblos indígenas perdieron su tierra mediante la Reglamentación y la acción gubernamental.

Desde el mismo comienzo, cuando el gobierno reclamó la propiedad de la tierra indígena, la política de reserva supuso que el gobierno debería encargarse de todos y cada uno de los individuos indígenas. Como resultado, la tierra de la reserva se convirtió en propiedad privada y, como tal, se asumió que sería cultivada de la mejor forma posible o usada del modo más efectivo. Esa perspectiva tan parcializada de la eficiencia bajo un sistema de propiedad privatizada subestimó la eficiencia del desarrollo sustentable basado en un sistema tradicional de uso de la tierra e ignoró el beneficio cultural y societal del aspecto colectivo del uso indígena tradicional de la tierra. Como resultado de la "política de privatización" del gobierno y debido a la urgente necesidad de dinero, aquellos que tienen derecho a la reserva venden frecuentemente la tierra en forma legal o ilegal y se quedan con nada. En vez de asegurar los medios de subsistencia y la supervivencia de los pueblos indígenas, la "privatización" de la política de reserva, es decir, el derecho de los individuos indígenas taiwaneses a la tierra de la reserva, causará en última instancia la pérdida de una gran cantidad de tierra indígena.

La "Reglamentación sobre el Desarrollo y Manejo de Tierra de Reserva Indígena" es un decreto basado en el artículo 37 de la "Ley sobre la Conservación y Uso del Área Montañosa" (la Ley). La Ley no incorpora claramente la peculiaridad de la tierra de la reserva indígena; el Artículo 37 habla solamente sobre el establecimiento de tierra de reserva indígena y el derecho exclusivo de la población indígena a la misma. El derecho de las naciones indígenas a manejar por sí mismas, colectivamente, la tierra de la reserva y la obligación del gobierno a asistirlas no están incluidos. Los pueblos indígenas han realizado campañas y han demandado la revisión de la Reglamentación o la promulgación de legislación separada desde los años 80. Por otro lado, el "Ping-quan-hui" (un grupo de interés para la población no-indígena que habita o invierte en áreas tradicionales indígenas) que tiene estrechas conexiones con los poderes políticos y las empresas privadas, está también realizando un esfuerzo para que se revise la Reglamentación o se promulgue nueva legislación que libere la reserva del derecho único de los pueblos indígenas "para promover el desarrollo del área habitada por pueblos indígenas". Ante tal disputa, el Ministerio de Asuntos Internos, el organismo a cargo de las reservas indígenas, comenzó, de hecho, a redactar la "Ley sobre el Desarrollo y Manejo de la Tierra Indígena de Reserva". En caso de que el Congreso no ratificara el proyecto de ley rápidamente, el Ministerio también preparó una revisión de la Reglamentación. A partir de este proyecto de revisión de la Reglamentación es posible comprender la opinión del Ministerio a cargo de la política sobre tierra indígena de reserva y, por lo tanto, se puede tener una idea de la posible dirección de la futura legislación.

Artículo 15 y Artículo 18 del Proyecto de Revisión de la "Reglamentación sobre el Desarrollo y Manejo de Tierra de Reserva Indígena"

Un punto importante de la revisión es permitir a personas no-indígenas tener derechos por herencia. Para impedir incongruencias entre la Reglamentación y la Ley, de la cual forma parte y la que a su vez legitima la validez de la Reglamentación, el Ministerio de Asuntos Internos propone al mismo tiempo la revisión del Artículo 37 de la Ley. Ya es cuestionable cómo un decreto puede decidir la dirección de la legislación. El hecho de que el esfuerzo que hizo el Ministerio fue en interés de personas no-indígenas es, en sí mismo, contrario a la ley existente y es también inconsecuente con la esencia de las previsiones que regulan la tierra de reserva como se expresa en el Artículo 3 de la Reglamentación, el cual establece que la tierra de reserva es para asegurar los medios de subsistencia de la población indígena y está reservada para su uso.

Podría parecer irrazonable, o injusto, prohibir a las personas no-indígenas heredar la reserva. Sin embargo, la lógica es que la tierra indígena está integrada a la solidaridad social, y la distribución y uso de tierra de propiedad comunal están basados en un estatus del individuo dentro de la nación a la cual él o ella pertenece. Tal relación entre los seres humanos y la tierra es más radical que el patrimonio ancestral "común".

En la última revisión, el Ministerio de Asuntos Internos no sólo ignoró el aspecto colectivo de la tierra de reserva sino que tampoco hizo ningún esfuerzo para poner fin a la compra ilegal de tierra de reserva. Por el contrario, trató de levantar la barrera que impide a las personas no-indígenas tener derecho sobre la tierra de la reserva, lo cual facilitaría a los consorcios y "Ping-quan-hui" comprar tierra de la reserva indígena.

Artículo 28-1 y Artículo 42-1 del proyecto de revisión de la "Reglamentación sobre el Desarrollo y Manejo de Tierra de Reserva Indígena"
En adición a la posibilidad de que las personas no-indígenas pudieran tener derechos legales a la tierra de reserva indígena, otros artículos están tratando de legitimar las transacciones ilegales del pasado. El "Programa de Investigación sobre el Uso de Recursos de Reserva Indígenas de 1955", y el Artículo 28-1 de la revisión constituyen, en realidad, la séptima "certificación", como continuación de las seis previas, legitimando aun más apropiaciones ilegales de tierras de reserva indígena. Las primeras dos cláusulas del Artículo 28-1 indican que: aquellas personas que usaron ilegalmente la reserva antes de la "certificación" pueden continuar usando la tierra mediante un arrendamiento, y la reserva usada ilegalmente después de la "certificación" debería ser retirada por el gobierno. La retórica no es nueva. En otras palabras, todos aquellos agricultores ilegales no necesitan preocuparse demasiado sobre la posibilidad de que se les "retire" la tierra ya que el Ministerio de Asuntos Internos siempre ha sido indiferente frente a las ofensas y siempre habrá otra "certificación" para legitimar todas las transacciones ilegales una vez que haya una cierta cantidad de nuevas apropiaciones ilegales.

La consecuencia del terremoto

En años recientes parece que cuando llueve el desastre se asoma en las áreas indígenas. Los deslizamientos de tierra, el colapso de caminos o inundaciones de barro han sido acontecimientos comunes. Estos desastres estaban usualmente relacionados con el llamado "terremoto 921" de septiembre de 1999. Pero se ha hecho evidente que no hay que culpar sólo a las fuerzas naturales sino también a la imprudente e irrestricta forma de desarrollo, orientada a la ganancia. Revela lo que los pueblos indígenas han sido forzados a sacrificar para su supervivencia económica, así como la magnitud de los cultivos en áreas montañosas por personas no-indígenas, todo en nombre del "desarrollo" de áreas indígenas. Ambas cosas reflejan agudamente el fracaso del gobierno en responder positivamente a las transiciones que suceden en las sociedades indígenas.

Después del terremoto, los miembros de los pueblos indígenas fueron ubicados, como es usual, al final de la lista de prioridades para el rescate y la rehabilitación. Además, los suministros generalmente no pudieron cubrir las necesidades. La distancia geográfica y cultural entre los pueblos indígenas y la mayoría de la población dejó a esta última o bien poco preocupada o concluyendo por sí misma lo que podrían ser las necesidades de los pueblos indígenas. Este ha sido el caso, catástrofes naturales o no. Irónicamente, la autonomía de las tribus creció bajo tales dificultades. La autoreconstrucción de la aldea *thao* de la comunidad Mihu de Tayal es un ejemplo de reorganización de instituciones sociales indígenas que han sido debilitadas durante muchas décadas. Pero la oportunidad de crecimiento de la autonomía de las tribus indígenas también conlleva peligros potenciales. El gobierno todavía controla el usufructo de la tierra, el manejo de los recursos y la planificación del desarrollo, y todavía ignora el impacto cada vez más destructivo de la actual forma de desarrollo en áreas indígenas. El modelo de sus esfuerzos de reconstrucción parece estar basado en los principios de reconstrucción al "estilo original", lo cual en última instancia significa satisfacer las necesidades de la mayoría. En vez de considerar qué tipo de reconstrucción quieren las comunidades indígenas, qué es bueno para la economía de la tribu o qué ayudará a resolver sus propios problemas, ellos están buscando lugares "más seguros" para gozar del panorama, construir caminos más anchos y paredes de soporte más gruesas y tratar de revivir el turismo para alcanzar el crecimiento económico.

Los pueblos indígenas temen que todas las previsiones de la "Ley de Reconstrucción del Terremoto 921" que tienen como objetivo ayudar a recuperar el área que sufrió el terremoto, como reducción del ingreso, préstamos a bajo interés, registro de propiedad simplificado, requisitos simplificados para las investigaciones sobre los efectos sobre el medio ambiente, en última instancia ayudarán a las compañías y empresas constructoras a continuar con la misma lógica de "desarrollo" para obtener una entrada más fácil a las áreas indígenas. Los movimientos en gestación de las comunidades indígenas, dirigidos a recuperar más control sobre sus asuntos, a reconstruir la autonomía de la tribu, podrían ser aniquilados otra vez si no existe un programa especial para apoyarlos, si no hay fondos suficientes o si los requisitos legales no pueden ser ajustados. Los esfuerzos de las tribus en busca de un desarrollo autónomo, para atraer a los trabajadores urbanos migrantes otra vez a las comunidades, para resolver el problema del desempleo, para convertirse en económicamente independientes y para recuperar su dignidad podrían, entonces, fracasar.

FILIPINAS

Confirmación de la constitucionalidad de la Ley de Derechos de los Pueblos Indígenas

La Suprema Corte de las Filipinas confirmó la Constitucionalidad de la IPRA con una votación de 7 a 7 en su sentencia del 28 de noviembre de 2000. La sentencia de la Suprema Corte sobre el caso Isagani-Cruz había sido aguardada ansiosamente por las organizaciones indígenas y sus simpatizantes. El caso cuestionaba la constitucionalidad de varias previsiones de la Ley de Derechos de los Pueblos Indígenas (IPRA), entre ellas, la previsión sobre la propiedad comunal de tierras y recursos (incluyendo los recursos del subsuelo) por parte de los pueblos indígenas, lo cual es muy importante. Se argumentó que esta previsión viola la Doctrina Regaliana, la cual estableció la propiedad estatal sobre las tierras públicas y los recursos contenidos en ellas (por un análisis más detallado de los argumentos, ver el artículo "Constitutional Challenges on the Indigenous Rights Act" en Philippine Natural Resources Law Journal Vol. 10, No. 1, junio, 2000).

Se considera que la decisión, que fue hecha pública oficialmente el 6 de diciembre, marca por primera vez en Asia el reconocimiento por un gobierno nacional de los derechos territoriales de los pueblos indígenas. Sin embargo, aunque la batalla pueda estar ganada, la guerra todavía no finalizó. La votación de 7 a 7 de la Suprema Corte fue ganada por muy estrecho margen, y los solicitantes presentaron una Moción de Reconsideración. Como había sólo una vacante en la Suprema Corte, el nuevo juez (el 15º) nombrado por el expulsado Presidente Estrada poco antes de su dimisión, determinará la nueva mayoría. Los detentadores de grandes intereses creados (principalmente en la minería) que están tras de la petición ejercen una severa presión sobre el resultado final.

Comisión Nacional sobre Pueblos Indígenas paralizada bajo el gobierno de Estrada

Durante todo el tiempo que el ex Presidente Estrada estuvo en funciones, su administración mostró una escandalosa falta de voluntad política para implementar la ley. Los fondos destinados a un adecuado funcionamiento de la NCIP fueron retenidos con referencia al caso judicial pendiente, y el Secretario del Departamento de Medio Ambiente y Recursos Naturales (DENR) dio órdenes de detener la implementación de IPRA, lo que significó: no firmar ningún certificado de título de dominio ancestral (CADT).

Por lo tanto, la Comisión Nacional sobre Pueblos Indígenas (NCIP), cuya tarea es implementar la IPRA, no ha funcionado virtualmente desde su creación. Además, se crearon otros dos "Equipos de Trabajo" sobre Pueblos Indígenas bajo la directa responsabilidad de Estrada, y fueron superpuestos a la NCIP (el "Equipo de Trabajo Presidencial sobre Dominios Ancestrales" en febrero de 1999 y el "Equipo de Trabajo Presidencial sobre Pueblos Indígenas" en febrero de 2000).

Como sus predecesores, la NCIP estaba en peligro de convertirse en una herramienta para proteger los intereses de políticos y empresas privadas en vez de los de los pueblos indígenas. No se emitió ni un solo título de dominio ancestral hasta el momento en que Estrada fue expulsado por una

TAMA NA! SOBRA NA!
PALITAN NA!
JUSTICE

Demostración masiva contra el presidente Estrada en la ciudad de Baguio, Cordillera. En enero de 2001, muchos indígenas de la Cordillera se sumaron a las protestas masivas en todo el país por el derrocamiento de Estrada.
Fotos: Alianza de los Pueblos de la Cordillera

BEST COPY AVAILABLE

protesta popular masiva y pacífica, que fue conocida como "Poder Popular II" (en referencia a las protestas que forzaron al Dictador Marcos a dimitir e irse del país en 1986). Mientras que todas las 181 Demandas de Dominio Ancestral habían quedado pendientes, la NCIP emitió 101 certificaciones a las compañías mineras estableciendo que las áreas bajo certificación, o bien no estaban habitadas por pueblos indígenas, o estaban fuera de cualquier demanda de dominio/tierras ancestrales, incluso frente a la clara evidencia de que en esas áreas vivían pueblos indígenas.

Después de la sentencia de la Suprema Corte, la NCIP fue puesta bajo presión por las ONGs y las organizaciones indígenas para que comenzara a emitir Certificados de Títulos de Dominio Ancestral (CADTs) y, al final del término de su ex presidente Dao-as, el 20 de febrero de este año, se había firmado una pequeña cantidad de CADTs.

La nueva Presidenta Gloria Macapagal-Arroyo señala compromiso con la IPRA

Existe una razón para tener esperanzas de que los sucesos tornen en favor de la IPRA bajo la recién instalada presidenta Gloria Macapagal-Arroyo. El 20 de febrero del año 2001, la Presidenta Arroyo firmó la Orden Ejecutiva Nº 1, creando la Oficina del Asesor Presidencial para Asuntos Indígenas (OPAIPA) y nombró al Embajador Howard Dee como su jefe. Inmediatamente después de asumir su cargo, Dee organizó un foro consultivo, el pasado 9 de marzo, con representantes de organizaciones de pueblos indígenas, ONGs y grupos eclesiásticos, que examinó cómo asistir al gobierno para implementar plenamente la Ley de Derechos de los Pueblos Indígenas. La Presidenta Arroyo también nombró a Edtami Mansayagan, un *manobo* de Mindanao quien ha estado involucrado en el movimiento indígena durante décadas y que es conocido por su compromiso e integridad, como Oficial a Cargo y Director Ejecutivo de la NCIP, quedando pendiente la auditoría institucional y de actividades y el nombramiento de sus nuevos comisionados.

Durante el foro, los participantes revisaron y evaluaron la actividad de los antiguos funcionarios de la NCIP y notaron la percepción negativa que tenía la opinión pública de la organización. El foro criticó el proceso de selección por el cual fueron nombrados sus funcionarios y el personal y su incapacidad para encarar los temas que afectan a los pueblos indígenas y responder a los mismos. También subrayó una serie de temas que requerían atención gubernamental:

- Un cambio en la posición del gobierno sobre el caso de la IPRA en la Suprema Corte para asegurar una sentencia favorable.

- Una moratoria de la emisión de CADTs y CALTs y certificaciones de libre e informado consentimiento (FPIC) hasta la revisión de su proceso.
- Detener la práctica de suplir a los guardias de seguridad de las firmas empresariales que operan en dominios ancestrales por CAFGU o unidades paramilitares similares.
- El retorno de lo pueblos indígenas desplazados de sus territorios ancestrales, como la Asociación de Tribus Manobo de Quezon (QUEMTRAS).
- La creación de un Comité Consultivo de Pueblos Indígenas.
- La inmediata liberación del presupuesto de la NCIP.

Región de la Cordillera

Minería

En junio de 2000, el gobierno nacional aprobó nueve solicitudes mineras en la Cordillera, cubriendo un área total de tierra de 15.064 hectáreas. Están ubicadas en las municipalidades de Mankayan, Tuba e Itogon en la Provincia Benguet, y Bucay y Licuan-Baay en Abra. Las solicitudes aprobadas son las de Lepanto Consolidated Mining Company, Philex Mining Company, Crescent Mining and Development Company y Jobel Corporation, todas registradas como compañías locales. Las áreas mineras solicitadas están dentro de los territorios de los pueblos indígenas *tingguian, kankanaey* e *ibaloi*. Las comunidades afectadas nunca fueron adecuadamente informadas ni consultadas.

Otras 126 concesiones mineras en la región de la Cordillera están siendo procesadas para su aprobación, cubriendo un área total de tierra de 711.965 hectáreas. El Departamento de Medio Ambiente y Recursos Naturales (DENR) dijo que estaba apurando la aprobación de estas solicitudes para alentar las inversiones extranjeras en el país. La mayor parte de estas solicitudes son de compañías multinacionales como Newmont, con sede en los EE.UU., o Climax Arimco de Australia. La oposición en las áreas cubiertas por estas solicitudes sigue siendo firme.

Represas

La oposición a la Represa San Roque se está fortaleciendo con la formación de Timmawa, el Movimiento Campesino del Río Agno para Liberar al Río Agno. Timmawa fue fundado el 13 de marzo con más de 300 miembros de Itogon, Benguet, San Manuel y San Nicolás de Pangasinan. El proyecto de megarepresa de US$1.100 millones, financiado por el Banco Japonés para la Cooperación Internacional (JBIC), está actualmente en construcción y está propuesto terminarlo para el año 2004. La continuación de la construcción de esta represa viola varias leyes, como la Ley de Derechos de los Pueblos Indígenas, el Código de Gobierno Local y el Código de Inversiones.

JBIC no ha liberado completamente los préstamos debido a las crecientes protestas y porque todavía están por cumplirse varios requisitos legales. Aparte de la Represa San Roque, otras dos represas están actualmente en construcción, la Represa Agbulu en Apayao y la Represa Bakun en Benguet. Además, se está buscando financiación extranjera para otros dos proyectos de megarepresas en la Cordillera: la Represa Matuno en Ifugao y la Represa Palsuguan en Abra. Ninguno de los proyectos de megarepresas cumplieron con el requisito de obtener el libre, informado y previo consentimiento de los pueblos indígenas afectados, como se estipula en la Ley de Derechos de los Pueblos Indígenas.

La Nueva Administración

Los dirigentes del ex "Movimiento Resigna Erap" celebraron una reunión con la nueva Presidenta Gloria Macapagal-Arroyo el 24 de marzo de 2001. El CPA llamó la atención de la nueva presidenta sobre los urgentes temas de los pueblos indígenas de la Cordillera con relación a los proyectos de represas y minería en la región. La presidenta prometió que su administración buscaría el consentimiento de los pueblos indígenas de los proyectos implementados en la región.

Elecciones

Debido al éxito del Poder Popular II en expulsar al ex Presidente, ahora existe un fuerte movimiento entre los pueblos indígenas para participar en las elecciones locales y nacionales programadas para mayo de 2001. El CPA y sus organizaciones afiliadas están formando alianzas activamente con partidos y candidatos progresistas, con la esperanza de influir sobre el resultado de las elecciones para lograr un gobierno y una legislación más democráticos que posibiliten el genuino reconocimiento de los derechos de los pueblos indígenas desde el nivel local hasta el nacional.

Muerte de dos líderes indígenas de la Cordillera

La Sra. Susan Longid, miembro del Centro Ecuménico Regional de la Cordillera (RECCORD) y miembro del Consejo Regional de la Alianza de los Pueblos de la Cordillera, falleció el 19 de marzo. Tenía 55 años y había estado sufriendo de cáncer. La Sra. Longid, una *bontoc* de la ciudad de Bontoc en la Provincia Montaña, estuvo en la primera línea del movimiento por el reconocimiento y protección de los derechos de los pueblos indígenas. Ella fue una de las pioneras en la elaboración de módulos educacionales sobre temas e intereses de la Cordillera durante su tiempo como Directora Ejecutiva del Grupo de Escuelas de la Cordillera, una red de escuelas protestantes de la Cordillera.

El Sr. Eddie Daguitan, Secretario-General de la Rama Kalinga de la Alianza de los Pueblos de la Cordillera también murió de cáncer el 18 de marzo de 2001. Tenía 42 años de edad. Eddie, un miembro de la tribu *mangali* de Kalinga ya era un activista contra las Represas Chico a fines de los años 70 y se convirtió en un organizador de estudiantes indígenas en Baguio. Como agricultor, estaba muy comprometido con el desarrollo de tecnologías apropiadas y el trabajo socioeconómico para las comunidades indígenas en la Provincia Montaña y Kalinga.

Los fallecimientos de Madre Susan Longid y de Eddie Daguitan son una gran pérdida para el movimiento de los pueblos indígenas de la Cordillera. Sus vidas siempre serán una fuente de inspiración y permanecerán en el corazón y en la lucha del pueblo.

Fuentes

MGB-DENR Certified List of Approved and Pending Mining Applications in the Cordillera Region.

Comunicados de prensa de CPA.

Mindoro

Revocación de permiso minero en el dominio ancestral de los mangyan en Mindoro

El Secretario del DENR, Heherson Alvarez, revocó el Acuerdo Compartido de Producción Mineral (MPSA) de la Abglubang Mining Corporation, el 11 de abril de 2001.

El 14 de marzo de 1997, Mindex Resources Development, Inc., una compañía noruega dedicada a la exploración y explotación de recursos minerales en Noruega, Groenlandia, Ghana y Vietnam, recibió un permiso de exploración del Buró de Minas y Geo-Ciencias del DENR. La subsidiaria de Mindex en las Filipinas es Abglubang Mining Corporation, la cual tenía una parte de dos tercios en el área de la concesión. Mindex Resources Development fue más tarde rebautizada como Crew Mineral Philippines (CMP) después de que inversores canadienses compraron parte de la compañía.

El MPSA adquirido por Abglubang Mining Corporation (AMC) cubría 9.720 hectáreas en Sablayan, Mindoro Occidental y Victoria, Mindoro Oriental durante 25 años. El planificado proyecto minero de níquel habría invadido las tierras ancestrales Samahan ng mga Nagkakaisang Mangyan Alangan (SANAMA) y Kapyan Agpaysarigan Mangyan Tadyawan de los pueblos *alangan* y *tadyawan*. Ambos grupos recibieron un certificado de demanda de dominio ancestral del DENR antes del otorgamiento del permiso de exploración.

El gobierno local, la iglesia y la sociedad civil de Mindoro se opusieron al proyecto minero. A la cabeza de la lucha estaban las organizaciones de pueblos indígenas, fundamentalmente Kapulungan Para sa Lupaing Ninuno (KPLN), una federación provincial de *mangyan* de Mindoro Oriental. El DENR concluyó que había suficientes razones para revocar el MPSA de AMC como, p. ej., la omisión de obtener una evaluación de impacto ambiental (EIA) y la aprobación previa de las Unidades de Gobierno Local pertinentes. También destacó que AMC no tenía un "registro comprobado de antecedentes".

Palawan

Los dominios ancestrales siguen sin ser reconocidos

Los Dominios Ancestrales de los pueblos indígenas de la isla de Palawan siguen sin ser reconocidos debido a la falta de implementación de la IPRA por parte de la NCIP durante los pasado años y la actitud no-colaboradora de los gobiernos locales, especialmente en la Municipalidad de Rizal. Palawan NGOs Network Inc. (PNNI) y otras organizaciones están tratando ahora de plantear soluciones alternativas para asegurar los derechos de los pueblos indígenas a sus Dominios Ancestrales, apelando a la Ley de la República Nº 7611. Esta habilita al Consejo de Palawan para el Desarrollo Sustentable (PCSD) a dirigir, implementar y dar dirección política al Plan Ambiental Estratégico para Palawan (SEP) y encargarse del reconocimiento de tierras ancestrales tribales como un componente importante de la Red de Áreas Ambientalmente Críticas (ECAN). Hasta ahora, el Comité Especial de Palawan sobre Zonas Tribales Ancestrales (PSCTAZ) ha contado con capacidades y habilidades técnicas muy limitadas para realizar las tareas relativas a la identificación y delineación de las zonas tribales. Además, hay muy poca comunicación entre PSCTAZ y el DENR relativa al seguimiento de solicitudes CADC pendientes, como las de las comunidades *pälawan* de Rizal y los *batak* de Tanabag. Sin embargo, hay esperanzas de que las solicitudes CADC pendientes sean reexaminadas y procesadas mediante la implementación de la reciente Orden Ejecutiva presidencial Nº 1 (ver párrafo anterior).

Durante el año 2001, continuó la división en zonas de Palawan según los criterios de ECAN y esto representa una amenaza más para el acceso y control indígena sobre sus territorios. ECAN es el punto fundamental de la estrategia de la Ley SEP, que ubica la mayor parte de la provincia bajo un desarrollo controlado. Las áreas cubiertas por ECAN incluyen tres componentes importantes: Tierras Ancestrales Terrestres, Costeras/Marítimas y Tribales. Algunas de las zonas propuestas (es decir, zonas centrales) limitan o excluyen el acceso humano a los recursos naturales, con repercusiones predecibles sobre los medios de subsistencia indígenas. La división en zonas de ECAN está siendo completada ahora en toda la provincia de Palawan sin ninguna forma de coordinación con las comunidades indígenas locales. Se espera que el resultado del relevamiento de ECAN y los mapas conexos sean presentados al gobierno Provincial antes o inmediatamente después de las elecciones nacionales de mayo de 2001.

Destrucción de los recursos naturales y minería

Durante el año 2000 hubo un resurgimiento de la pesca con dinamita, también en conexión con las llamadas "operaciones tiburón". Algunos de los peces que son usados generalmente como carnada para los tiburones no pueden ser fácilmente capturados con línea y anzuelo, y entonces se usan bombas para capturarlos. Las bandas de las islas de Bancalaan, Mangsi y Balabac no sólo están involucradas directamente en la pesca ilegal sino que también venden dinamita y cianuro a las poblaciones locales, especialmente en las municipalidades de Rizal y Quezon. Las agencias gubernamentales pertinentes y las autoridades militares son bien conscientes de la situación pero no tienen medios (p. ej., lanchas veloces) para aprehender a los pescadores ilegales. Debido a la sobreexplotación de los recursos marinos, los métodos tradicionales de pesca se han tornado inefectivos. Como resultado, los pueblos indígenas se han visto forzados a refinar su tecnología pesquera, duplicando el tamaño de sus redes, o incluso usando dinamita.

Las amenazas de las actividades mineras a gran escala aumentaron en forma exponencial durante el año pasado. Sorprendentemente, el Consejo de Palawan para el Desarrollo Sustentable (PCSD) endosó el plan de la Rio Tuba Nickel Mining Corp. (RTNMC) relativo al establecimiento de una refinería de níquel, el establecimiento de una planta de producción suplementaria de sulfuro de hidrógeno y operaciones de extracción de piedra caliza. PCSD es un organismo gubernamental único creado por la Ley de la República Nº 7611 con el mandato de proteger el medio ambiente dentro de la provincia. En realidad, los intereses indígenas no están representados en el consejo, cuyos miembros continúan tomando en consideración nuevas solicitudes mineras. El riesgo planteado por la Planta Procesadora al medio ambiente y a las comunidades locales es muy elevado. Las ONGs locales de Palawan requieren ahora la asistencia de organizaciones internacionales para que influyan sobre el Gobierno filipino contra la expansión de RTNMC en el sur de Palawan y para que detenga todas las operaciones mineras a gran escala en Palawan.

Mindanao

Nuevo alto el fuego entre el Gobierno y el MILF

A pesar de escaramuzas intermitentes y violaciones del alto el fuego logrado el 17 de julio de 1997 entre el gobierno y el Frente Islámico de Liberación

Moro (MILF), ambas partes decidieron abrir formalmente conversaciones de paz el 25 de octubre de 1999. Cuatro rondas de conversaciones de paz formales tuvieron como resultado que ambas partes acordaron presentar sus documentos formales de posición en el punto nueve de la agenda presentada por el MILF. No obstante, el ejército comenzó una verdadera guerra el 28 de abril de 2000 con el propósito de abrir la Autopista Narciso Ramos (una autopista que conecta Cotabato y Lanao del Sur) debido, supuestamente, a que rebeldes del MILF estaban estableciendo puestos de controles. El gobierno llevó a cabo la guerra vigorosamente a pesar de los llamados por un alto el fuego y un retorno a la mesa de negociaciones por parte de grupos como la Conferencia de Obispos Católicos de las Filipinas, la Conferencia de Obispos-Empresarios o la Organización de la Conferencia Islámica. Los *lumad*, los pueblos indígenas de Mindanao, quedaron atrapados en el medio. Miles de ellos se vieron forzados a abandonar sus hogares y buscar refugio en campos de evacuación y en cualquier otra parte (ver *El Mundo Indígena 1999-2000)*. No les quedó otra opción. Ambas fuerzas opositoras, el ejército y los rebeldes moro, sospechan que los lumad son ayudantes o simpatizantes de sus enemigos. Las comunidades lumad que viven en la periferia de las áreas controladas por los moro son acusadas por el ejército de ser "espías" al servicio de los rebeldes y son víctimas del fuego de artillería y los bombardeos de las tropas gubernamentales. Por otro lado, los rebeldes acusan a los lumad de ser informantes del gobierno. Además, las comunidades lumad que residen dentro de las áreas controladas por los rebeldes son forzadas a pagar permanentemente "contribuciones revolucionarias" y sus jóvenes son reclutados como tropas frescas para la guerrilla moro.

Los campamentos del MILF cayeron uno tras otro debido a la superioridad en armamento y el uso de aviones por parte de las tropas gubernamentales. El MILF abandonó simplemente sus campamentos. El 9 de julio de 2000, el principal campamento del MILF, Abubakre As-Siddque, cayó en manos de los militares. El mismo Presidente Joseph E. Estrada izó la bandera filipina en una plaza considerada sagrada por los musulmanes por ser la "capital" de su Estado Islámico, y celebró la "victoria" con lechón y cerveza, un proceder que demostró claramente una falta de sensibilidad por los sentimientos religiosos de los musulmanes. Pocos días más tarde, el jefe Hashim declaró una *jihad* (guerra santa) contra el gobierno filipino y sus fuerzas armadas.

En medio de la "guerra total" del gobierno y la *jihad* del MILF, el gobierno anunció un enorme programa de ayuda y rehabilitación de 100 mil millones de Pesos (US$2,2 mil millones). Algunos de los 600.000 refugiados tienen que retornar y ser asistidos por el gobierno. El gobierno también planea reparar caminos y puentes dañados, edificios y mezquitas. Sin embargo, en muchas instancias los refugiados se niegan a retornar a causa de las emboscadas casi diarias del MILF contra las posiciones de GRP.

Durante los turbulentos tiempos de la imputación, el MILF decidió permanecer abierto al proceso de paz. El recién instalado gobierno de la Presidenta Arroyo adoptó y populariza la "paz total" en contraste con la "guerra total" de la administración anterior, como la nueva política para resolver el conflicto en Mindanao. El gobierno detuvo todas las operaciones militares contra los rebeldes moro como un gesto para promover las nuevas negociaciones de paz. Sin embargo, el gobierno declaró enfáticamente que no devolvería ninguno de los campamentos rebeldes conquistados.

Para evitar el sabotaje, el gobierno impulsa negociaciones secretas con los líderes moro. El pasado marzo de 2001, el Asesor Presidencial sobre el Proceso de Paz, Eduardo Ermita, se reunió secretamente con los representantes del MILF liderados por Al Haj Murad, Vicepresidente de Asuntos Militares, en Kuala Lumpur, Malasia. Acordaron reasumir las abortadas negociaciones de paz. Moner Bajunaid, Presidente del Panel Técnico del MILF y al mismo tiempo un candidato senatorial independiente, reveló en una entrevista radial que el MILF estaba consultando con su electorado en todo Mindanao sobre las negociaciones de paz. Sin embargo, la campaña para las elecciones nacionales del 14 de mayo de 2001 ha detenido el proceso de ambas partes.

TIMOR ORIENTAL

Timor Oriental fue una colonia portuguesa durante más de 400 años. En 1975 fue invadida por Indonesia. Este hecho marcó el comienzo de una brutal e ilegal ocupación. En 1999, cuando Indonesia fue debilitada en forma temporaria por una crisis económica regional, su gobierno permitió la realización de un referéndum en Timor Oriental para determinar el futuro del territorio. Cuando se celebró el referéndum en agosto de 1999, una mayoría abrumadora votó por la independencia.

Milicias pro-indonesias, creadas y sustentadas por el ejército indonesio, trataron de influir sobre el resultado. Durante los meses anteriores al referéndum, los simpatizantes de la independencia fueron hostigados e intimidados. Varios miles resultaron muertos. Cuando se anunció el resultado, las milicias y el ejército indonesio se descontrolaron, destruyendo propiedades y matando a más personas.

En septiembre de 1999 arribó a Timor Oriental una fuerza militar internacional (INTERFET) conducida por Australia y, en octubre, el último soldado indonesio abandonó el territorio. En febrero del año 2000, INTERFET fue remplazada por una fuerza regular de paz de la ONU. Desde 1999, Timor Oriental ha sido administrado por UNTAET, la Administración Transitoria de las Naciones Unidas en Timor Oriental. Se espera que la independencia formal comience a fines del año 2001 o comienzos de 2002. El nombre oficial del país será probablemente Timor Loro Sa'e.

El pueblo de Timor Oriental es finalmente libre. La ocupación indonesia quedó en la historia pero el futuro no será fácil. Enfrenta una serie de serios problemas que tendrá que resolver para construir su nueva nación.

Infraestructura y economía

Uno de los problemas es la infraestructura. Muchos caminos están en malas condiciones, especialmente durante la estación de lluvias (noviembre-marzo). En las ciudades costeras, los puertos necesitan ser reparados y expandidos para que el país pueda comerciar con el resto del mundo.

Un segundo problema es la economía. Durante la ocupación indonesia, todos los activos económicos importantes estaban en manos de los generales indonesios –la familia Suharto y sus compinches- quienes explotaron a Timor Oriental para su beneficio personal. Ahora los *timorenses orientales* tienen que tomar el control de estos activos. El café es un producto importante pero durante el año 2000 el precio internacional del café cayó en un 50 por ciento, el nivel más bajo de los últimos 30 años. La madera era antes un producto importante pero se han cortado demasiados árboles y existe un serio riesgo de deforestación.

El mar en torno a Timor Oriental es rico en pesca pero muchos barcos pesqueros fueron destruidos por las milicias indonesias durante los turbulentos días de 1999. Los timorenses orientales tienen que construir una nueva flota pesquera. Tradicionalmente, la pesca no era una actividad importante en Timor Oriental, pues la mayoría de las personas trabajaba en la agricultura. Esto puede muy bien cambiar en el futuro.

Se puede encontrar petróleo y gas natural bajo el lecho oceánico entre Timor Oriental y Australia, en el área conocida como la Fosa de Timor. Estos recursos naturales darán probablemente un sólido fundamento económico a la nueva nación. Sin embargo, Australia es reacia a abandonar los derechos que se aseguró en un tratado firmado con Indonesia en 1989. El viejo tratado dividía los ingresos de los impuestos energéticos por partes iguales entre las dos partes. Naturalmente, Timor Oriental quiere una parte mayor. El viejo tratado es ilegal porque Indonesia no tenía ningún derecho legal sobre Timor Oriental y, por lo tanto, ahora se está negociando un nuevo tratado.

Es posible desarrollar el turismo hasta un cierto grado, pero no antes de que la infraestructura haya sido mejorada.

Educación y administración

Un tercer problema es el sistema educativo. Durante la ocupación indonesia, todos fueron obligados a aprender el idioma indonesio *bahasa indonesia*. Esto no continúará así. Hay varias lenguas locales en Timor Oriental, pero el *tetum* es la lengua franca. Los portugueses la usaban como lengua de la administración y algunas personas todavía lo hablan, especialmente los de la vieja generación. La generación más joven prefiere el inglés porque es la lengua de las computadoras y de Internet. Sin embargo, esto no significa que en realidad dominen este idioma. Debido a la historia reciente todos conocen el *bahasa indonesia* y esta lengua será probablemente usada por muchas personas durante largo tiempo en el futuro.

Un cuarto problema es la administración civil. Durante la ocupación indonesia el territorio estaba controlado por el ejército, con una pequeña administración civil en un papel subordinado. Esto no continuará. La nueva administración civil tendrá que supervisar la infraestructura, la economía y el sistema escolar.

También tendrá que encarar el problema del volumen poblacional. Hacia fines de la ocupación indonesia, Timor Oriental tenía aproximadamente 800.000 habitantes, de los cuales 100.000 vivían en la capital Dili. Desde la partida de Indonesia, muchas personas se han trasladado del campo y los pueblos más pequeños a Dili. Si esta afluencia de gente no es detenida, la capital estará pronto llena de pobres y desempleados. En un país libre es prácticamente imposible prohibir a los habitantes trasladarse, así que la nueva administración debe lograr que sea atractivo para los habitantes del interior o de los pequeños pueblos permanecer allí donde están.

En septiembre de 1999, cuando las milicias proindonesias escaparon a Timor Occidental, forzaron a unas 200.000 personas a seguirlas y todos terminaron en campamentos controlados por las milicias o el ejército indonesio. Desde entonces, algunos de ellos han obtenido permiso para retornar a Timor Oriental pero unas 100.000 personas todavía están viviendo en campamentos en Timor Occidental, esperando retornar. Será una importante tarea para la nueva administración proveer trabajo, vivienda y educación para los 100.000 refugiados (o rehenes).

Sistema político

Un quinto problema es el sistema político. Timor Oriental debe tener una constitución. Además, necesita elegir un parlamento y un presidente. Se espera ampliamente que la constitución estará dominada por el respeto de los derechos humanos, la democracia y el respeto por el derecho internacional. Los timorenses orientales saben mejor que la mayoría de las personas qué puede pasar cuando estos conceptos son ignorados y violados.

El primer presidente de un Timor Oriental independiente será probablemente Xanana Gusmao, quien fue el comandante supremo de la resistencia armada en las montañas (Falintil) hasta que fue capturado por lo indonesios en 1992. El primer ministro de relaciones exteriores será probablemente José Ramos-Horta, quien representó al movimiento de la resistencia en el exilio durante la ocupación indonesia. El Obispo Carlos Belo fue una importante figura en la lucha humanitaria contra Indonesia pero, siendo eclesiástico, no es probable que tenga ambiciones políticas.

El 15 de julio del año 2000 se estableció un nuevo gabinete de ocho miembros como gobierno transitorio en Timor Oriental. *Timor Link*, el boletín informativo de CIIR (Instituto Católico para las Relaciones Internacionales) informó:

> *"El nuevo organismo es considerado por la Administración Transitoria de las Naciones Unidas en Timor Oriental (UNTAET) y el Consejo Nacional de la Resistencia Timorense (CNRT) como un paso adelante hacia la independencia. Contando con cuatro miembros timorenses orientales, es la primera vez que líderes timorenses orientales participan como partes iguales en el gobierno de su país."*[1]

Divisiones internas

En adición a los problemas relativos a las instituciones y organizaciones, los timorenses orientales también tienen que enfrentar el hecho de que están divididos entre ellos mismos. En el pasado era fácil unirse contra Indonesia. Pero ahora que Indonesia se retiró, ellos descubren que no están de acuerdo en todo.

Existe una división entre las políticas de derecha y de izquierda; entre la vieja generación que vivió bajo el colonialismo portugués y la generación joven que sólo conoce la ocupación indonesia; y quizá una división entre el grupo externo que fue al exilio y el grupo interno que permaneció en Timor Oriental.

El papel y la influencia de la Iglesia Católica también puede ser una fuente de conflicto. Durante la ocupación, muchas personas se volcaron a la iglesia porque era la única organización legal que no estaba controlada por Indonesia y esta era una forma (relativamente) libre de expresar la oposición al invasor. No todas las personas que se integraron a la iglesia lo hicieron por razones puramente religiosas.

El mismo fenómeno pudo verse en Polonia durante la Guerra Fría, cuando muchos polacos se unieron a la iglesia para expresar su oposición al gobierno comunista y a la influencia soviética. Sin embargo, después del fin de la Guerra Fría, muchas personas pasaron a considerar a la Iglesia Católica como una fuerza reaccionaria que exigía obediencia y rechazaba el divorcio, el control de la natalidad y el aborto.

Los crímenes del pasado

La ocupación indonesia de Timor Oriental ya es historia pero no se perdió la memoria. ¿Cómo manejar los crímenes contra Timor Oriental? En América Latina, varias dictaduras militares entregaron el poder a civiles y gobiernos democráticos bajo la condición de que los generales recibieran amnistía por cualquier cargo criminal. Querían enterrar el pasado y tuvieron bastante éxito, al menos hasta hace poco. Para las víctimas, este enfoque es claramente inaceptable.

En Sudáfrica, se estableció una Comisión de Verdad y Reconciliación (TRC) para tratar los crímenes cometidos durante el apartheid. La idea era que la verdad debía decirse y así hacer posible la reconciliación. En Sudáfrica no se quiso usar el enfoque latinoamericano, de enterrar el pasado y dejar los crímenes impunes. Por otro lado, también se deseó evitar la venganza. Al vengarse no se produce más que nuevas víctimas y el ciclo de violencia continúa.

El enfoque sudafricano tiene muchas ventajas pero también fue criticado. Algunos blancos sintieron que era una caza de brujas contra ellos, mientras que algunas personas no-blancas sintieron que el TRC no tenía el alcance suficiente: los peces más pequeños se convirtieron en chivos expiatorios mientras que a los peces gordos se les permitió escapar. Las personas que estaban en la cumbre del sistema del apartheid nunca fueron tocadas.

Con respecto a Timor Oriental, las superpotencias nunca quisieron hacer una investigación seria del pasado. La evidencia señalaría no sólo a Suharto y a su régimen sino también a las potencias que lo apoyaron con dinero y armas.

Timor Oriental no puede realizar una investigación propia; no es probable tampoco que Indonesia lo haga. Lo que se necesita es una investigación internacional por parte de la ONU. El ámbito geográfico debería ser no sólo Timor Oriental e Indonesia sino también los gobiernos occidentales y las compañías privadas que apoyaron la agresión contra Timor Oriental. El marco temporal no sólo debería ser el turbulento año del referéndum de 1999 sino que debería remontarse hasta 1974, cuando se trazaron los primeros planes para la invasión. Dada la posición de las superpotencias, no es probable que la ONU realice algún día tal proyecto con seriedad.[2]

Un período de transición

Desde el año 1999 al 2000, Timor Oriental dio un paso gigantesco desde la ocupación indonesia hacia la independencia. En este momento, la antigua colonia portuguesa está en un período de transición durante el cual es gobernada por la ONU.[3] Aunque la administración de la ONU fue bienvenida por muchos y está allí para ayudar, puede paradójicamente ser un problema en sí misma. Una razón es el enorme abismo económico entre el opulento personal de la ONU por un lado y la gente pobre de Timor Oriental por el otro. Una segunda razón es que la ONU ha sido muy lenta en la transferencia del manejo de asuntos locales a los timorenses orientales. El jurista escandinavo, Christian Ranheim, quien fue observador de la ONU en Timor Oriental antes y después del referéndum de agosto de 1999, resume la situación de la siguiente forma:

> *"Mientras que el proceso para condenar a los culpables continúa, las organizaciones internacionales son acusadas de realizar una nueva colonización de Timor Oriental. Algunos observadores han alegado incluso que el pueblo está peor bajo la administración internacional que durante la ocupación indonesia.*
>
> *"Los timorenses orientales viven en una pobreza extrema, pero ven a los funcionarios de la ayuda internacional viviendo en hoteles flotantes cuyos precios son de US$ 200 por noche, bebiendo cerveza y disfrutando en el recién establecido club playero en Dili. El café que producen ya no se exporta debido a la falta de infraestructura. Las personas que estaban preparadas para realizar un esfuerzo nacional para reconstruir su propio país, sienten ahora un desaliento y una apatía que puede poner en peligro todo el proceso de transición".*[4]

Notas

[1] *Timor Link*, no. 50, agosto 2000. El gabinete de transición tiene ahora nueve miembros: José Ramos Horta fue agregado como ministro de relaciones exteriores en otoño del año 2000.

[2] *Timor Link* no. 51, diciembre 2000, contiene un suplemento especial titulado "En busca de justicia: un tribunal internacional para Timor Oriental".

[3] Damien Kingsbury, "East Timor at a cross-roads," *Jakarta Post*, 15 de diciembre, 2000. Vía Internet. Ver también James Traub, "Inventing East Timor," *Foreign Affairs*, julio-agosto, pp. 74-89

[4] Christian Ranheim, "Øst-Timor: På vei mot selvstendighet," *Mennesker og rettigheter*, vol. 18, no. 3, 2000, pp. 231-240. Traducido al español esto significa "Timor Oriental en camino hacia la independencia". El título de la publicación noruega es *Seres humanos y derechos humanos*.

Timor Oriental en Internet

East Timor Action Network / www.etan.org
East Timor Daily News / www.timor.com
Timor Aid / www.timoraid.org
Timor Today / www.easttimor.com

INDONESIA

Descentralización: nuevas leyes de autonomía

Las estructuras políticas del país y su arquitectura centralista fueron cuestionadas con el derrocamiento del Presidente Suharto en mayo de 1998. En la agenda de reformas, a las cuales apostó el gobierno de transición de B. J. Habibie, tuvo un lugar prominente la devolución de los poderes políticos y fiscales centralizados a las regiones. Aunque la economía estaba en el matadero, algunas regiones ricas en recursos naturales exigían una parte más equitativa de las ganancias de su explotación así como también una mayor libertad para hacer con ellas lo que les plazca. Otras regiones solicitaban menos intervención central en la política local. La mayoría pedía una mayor autonomía.

En un intento de revertir esta centralización, el gobierno de Habibie promulgó dos nuevas leyes: la Ley 22/1999 sobre Gobierno Regional y la Ley 25/1999 sobre Equilibrio Fiscal entre el Estado y las Regiones. La Ley 22 descentraliza la autoridad en todos los campos excepto en relaciones exteriores, defensa y seguridad, justicia, política monetaria y fiscal, religión y una serie de temas económicos generales. Es significativo que prevé la elección de encargados regionales -gobernadores provinciales y regentes de distritos- quienes, durante la época de Suharto habían sido nombrados centralmente. La Ley 25 otorga a los gobiernos regionales más control impositivo y les permite retener una parte substancial de los ingresos producidos en sus territorios. Los distritos provinciales recibirán ahora el 80% del ingreso de la mayoría de las operaciones mineras y forestales, el 30% de las ganancias provenientes del gas natural y el 15% del petróleo (si poseen ese recurso). La ley entrará en vigencia el 1 de enero de 2001.

La implementación de la Ley Nº 22/1999 y la Ley Nº 25/1999 ha causado reacciones divergentes en el público. Por un lado, los gobiernos locales y, por cierto, una importante proporción de ciudadanos de las islas más lejanas están entusiasmados con respecto a la promesa de autodeterminación y autonomía en términos de manejo de recursos naturales, gobierno local y planificación de inversiones contenidas en las leyes (o más bien, la representación de su contenido en el discurso oficial). Se reconoce ampliamente que el gobierno centralizado, de estilo "Nuevo Orden", ha probado ser insatisfactorio porque no ha logrado mejorar las condiciones de vida del pueblo, económica, sociopolítica y culturalmente. La concentración de los poderes políticos de toma de decisión en Yakarta y la relación económica depredadora entre el centro y las regiones han generado tendencias desintegrantes, especialmente con respecto a las provincias ricas en recursos naturales que han recibido muy pocos beneficios a cambio, como algunas provincias de Sumatra (Aceh entre ellas), Kalimantan Oriental y Papua Occidental (Irian Jaya).

La centralización no sólo ha afectado negativamente los aspectos materiales de la vida del pueblo sino que también ha creado problemas como la desorientación cultural de los pueblos que viven en las islas externas. Esta desorientación, a su vez, ha originado relaciones inflamables entre las diferentes comunidades religiosas y étnicas que podrían ser encendidas en cualquier momento, con el resultado de que pueden explotar conflictos violentos "horizontales" (conflictos comunes en la naturaleza) en todo el archipiélago a intervalos cada vez más cortos. El fortalecimiento de los distritos y las municipalidades acallarán el descontento durante un tiempo, al menos el de las élites locales cuyos intereses pueden satisfacerse dándoles una parte mayor de la distribución de los ingresos estatales. Por su parte, muchos habitantes locales han sido influidos por la retórica de la "autonomía", claramente la palabra más subyugante del año en el discurso oficial.

Por otro lado, para mucha gente, académicos críticos y la mayoría de las ONGs entre otros, las dos leyes plantearon más interrogantes que respuestas. Primero, según ellos, el proceso de redacción ha sido realizado sin una adecuada consulta con la población de las regiones. Ellos critican el programa de implementación de las medidas sobre autonomía como demasiado apretado, no permitiendo la creación de una adecuada conciencia sobre las implicaciones de la "autonomía regional" en el público general de las regiones. Hubiera sido deseable, dicen los críticos, implementar el proceso de forma gradual, comenzando por traspasar algunos poderes administrativos a las provincias y luego más poderes financieros.

Segundo, los críticos también dicen que aunque la ley asigna amplios poderes a los distritos y a las municipalidades, los gobiernos provinciales son pasados por alto, lo cual no será del agrado de aquellos movimientos que quieren que se encaren cuestiones más fundamentales, como los de Aceh y los de Papua Occidental. Entonces, bastante acertadamente, los activistas de esas regiones sospechan que tras la concentración de la ley en entidades sub-provinciales hay tácticas de "dividir para reinar", una sospecha alimentada en el caso de Papua Occidental por el plan decretado a comienzos de 2000 para dividir la provincia de Papua Occidental en tres provincias separadas. Se ha informado de movimientos similares en Aceh, donde el gobierno central sugiere incorporar gran parte del centro, sur y costa oeste de la provincia, áreas menos afectadas por la actividad separatista, a una nueva provincia llamada "Galaksi", una abreviación de sus partes constituyentes. Es bastante claro que estos perennes puntos inflamatorios de las regiones más alejadas de Indonesia , muy probablemente no encontrarán solución remendando límites administrativos, mientas se eviten soluciones basadas en encarar los problemas básicos de grandes sectores de la población local. Se dice que se están preparando arreglos especiales para Aceh y Papua Occidental, pero en ausencia de un diálogo honesto con los movimientos rebeldes activos allí (o, por cierto, con cualquier sector de la sociedad civil), la "autonomía" es proclive a convertirse solamente en un eslogan.

Una tercera preocupación es que aunque las leyes dan demasiado poco a grupos de pensamiento independentista en regiones ricas en recursos pero políticamente oprimidas, están sacando demasiado de áreas con poca riqueza natural, que se han beneficiado por cierto en el pasado de subsidios gubernamentales en sus presupuestos provinciales. Un estudio realizado por Bappenas (el Organismo de Planificación del Desarrollo Nacional) mostró que algunas provincias caerían en bancarrota si las Leyes fueran implementadas como está planificado, basado en el hecho de que hasta ahora el 82% de algunos presupuestos provinciales ha venido del gobierno central, y las Leyes sostienen que las provincias que no son autosuficientes necesitan ser liquidadas o unidas con otras provincias más prósperas. Las provincias indonesias orientales de Nusa Tenggara Timur y Nusa Tenggara Barat, provincias con una población predominantemente indígena, están entre las candidatas a la bancarrota (como también la Región de la Capital Yakarta y la Región Especial de Yogyakarta en Java).

Cuarto, y en forma más general, las ONGs temen las extravagancias de traspasar la responsabilidad del suministro de servicios sociales básicos a los gobiernos locales. Como no cuentan con experiencia de hacerse cargo de responsabilidades vitales, dicen, los gobiernos locales se podrían encontrar incapaces de suministrar servicios de salud y educación, o podrían permitir que los costos se elevaran tanto que los ciudadanos comunes ya no los puedan pagar. Además, existe el peligro de que, en el futuro, los servicios públicos como la educación sean suministrados de acuerdo a criterios étnicos o incluso religiosos, excluyendo a los grupos minoritarios (pueblos indígenas, entre ellos), ya que la influencia ecualizadora del gobierno central ya no existe.

Quinto, las ONGs están cuestionando inevitablemente la autonomía de los elaboradores políticos de Yakarta al formular las leyes de autonomía. El espíritu de centralismo, argumentan, todavía está flotando en las Leyes como resultado de la influencia del Fondo Monetario Internacional (FMI) y otros interesados extranjeros que han otorgado préstamos a Indonesia. Para tener una garantía del retorno de sus préstamos, estos actores se han asegurado que la explotación de recursos naturales de alto rendimiento sea dejada bajo el control del gobierno, lo cual es la razón de que sean formuladas Leyes separadas otorgando mejores condiciones a Yakarta en Irian Jaya (Papua Occidental), rica en madera y minerales, así como en Aceh, de donde viene el proveedor número uno de divisas extranjeras, el gas natural.

Sexto, las ONGs llegaron a la conclusión de que, con toda probabilidad, el presente esquema de compartir el poder con las regiones no fortalecerá el poder de la población en general de las provincias sino a las élites provinciales, exacerbando así, más que aliviando, el destino de las masas rurales. Se estima que probablemente el fortalecimiento del gobierno local resultará en un aumento de la corrupción, y los ambientalistas advierten que los políticos locales hambrientos de dinero alentarán una extracción maderera más rápida y, por lo tanto, una deforestación también más rápida. Y en vez de acabar con las operaciones mineras ambientalmente perjudiciales, sostienen, los legisladores locales usarán simplemente su nuevo remiendo para exigir mayores pagos de las firmas.

Séptimo, finalmente, algunas ONGs indonesias y extranjeras sostienen que la descentralización es más o menos directamente responsable de algunas de las peores situaciones de choques comunales que han sacudido al archipiélago durante los pasados dos años. Desde comienzos de 1999 ha sido establecida una serie de nuevos distritos y cuatro nuevas provincias en un intento de satisfacer las demandas de las élites locales por los beneficios de la administración y el poder. En muchos casos, esto generó luchas intensas sobre los límites de las nuevas unidades y derechos administrativos y frecuentemente violencia antes de las elecciones para la asamblea. La creación de la provincia de Maluku Norte, a mediados de 1999, es un caso claro, Poso en Sulawesi Central (ver más adelante) es otro: como las élites de los antiguos sultanatos de Ternate y Tidore lucharon por la supremacía en la provincia a crearse y el pueblo trató de impedir el resurgimiento del poder aristocrático, el dominio de los sultanatos, incluyendo Halmahera Norte, pronto se transformó en el escenario de luchas comunales pues cada lado trató de debilitar la base de poder del otro. Como resultado, la lucha entre musulmanes y cristianos desde octubre de 1999 ha dejado unos 3.000 muertos y a más de 100.000 personas sin hogar. Por lo tanto, frente a los perniciosos efectos de estos esfuerzos descentralizadores mal planeados, las ONGs extranjeras como Human Rights Watch, con sede en EE.UU., han hecho un llamado por una "completa moratoria de cualquier cambio de límites administrativos o reestructuración de la administración local hasta que exista una presencia creíble de la ley y el orden y la situación en Yakarta sea más estable".

En suma, los críticos de las leyes sobre autonomía regional temen que éstas sólo reemplacen a un gobierno central explotador y corrupto por el de las élites locales, que prolongan, si no empeoran, la malversación de los recursos naturales y que no lograrán fortalecer las bases de las comunidades locales en términos de autogobierno y del goce de los beneficios de la extracción de la riqueza natural de sus dominios ancestrales. También cuestionan las actuales capacidades de los grupos étnicos componentes y sus élites regionales para instrumentar formas factibles de convivencia y de autogobierno, lo cual convierte el apuro del centro en devolver el poder y reordenar la situación administrativa del país en una segura receta de desastre.

La posición de AMAN sobre la Autonomía Regional

AMAN (Alyansi Masyarakat Adat Nusantara) fue fundada en marzo de 1999 como la primera y hasta ahora la única organización paraguas nacional de pueblos indígenas. Su posición sobre la autonomía regional, presentada en este Anuario, es expuesta a continuación:

"Dados todos los problemas, debería pensarse seriamente sobre cómo el pueblo indonesio puede encontrar una salida a la penetrante crisis social, política y económica en que se encuentra el país hoy. Existe el peligro de que la implementación de un proyecto de descentralización mal concebido y el vacío de poder que crea empeorará considerablemente los problemas de la República, especialmente a corto plazo. El surgimiento de conflictos violentos como el de Sampit, Kalimantan Central, en febrero y marzo de 2001, destaca la necesidad de una urgente acción política. Las medidas legislativas sobre autonomía y la cuestión agraria tendrán que ser determinadas por las siguientes necesidades básicas para mejorar el bienestar de los pueblos indígenas y de la población rural en general:

- Acceso justo y equitativo a los recursos, especialmente a la tierra.
- Sustentabilidad de la producción, consumo y sistemas de distribución.
- Sustentabilidad de otros sistemas y sub-sistemas de reproducción social.
- Sustentabilidad de los sistemas autónomos de subsistencia locales.

En toda su historia, el país ha visto cómo la concentración de los poderes de toma de decisión sobre la tierra y los recursos naturales en el gobierno central ha tenido impactos negativos sobre la vida de la gente común. Los que ya tienen se están enriqueciendo más, mientras que los que no tienen se están empobreciendo aún más. Sin el fortalecimiento de las unidades locales de gobierno, nos enfrentamos a la perspectiva de una explotación eterna del Estado, es decir, del gobierno central y sus compinches, de los derechos indígenas, particularmente el derecho a gozar al menos de algunos de los frutos de la explotación de los recursos naturales de sus territorios ancestrales. El problemas es si la Autonomía Local, tal como ha sido conceptualizada ahora, es una forma adecuada para salir de la crisis y si puede arrancar de raíz los problemas como el quebrantamiento de las estructuras autóctonas de gobierno local de la época de Suharto en favor de la creación de estructuras uniformes desa (aldea) con sus concomitantes funcionarios bajo control gubernamental. La continua confianza de la Ley No. 22/1999 en el concepto de desa como un futuro centro de los poderes de autorregulación y autogobierno, aunque calificado como 'basado en los sistemas consuetudinarios locales y la historia local', presagia mal para la rehabilitación de los sistemas consuetudinarios de gobierno local. Mientras que estén basados en la uniformidad, las unidades administrativas más bajas y sus funcionarios continuarán careciendo de autoridad real, la cual es tan necesaria para eliminar efectivamente la lucha étnica y religiosa en el futuro. Para que sea exitosa, la reorganización administrativa del país tiene que estar inspirada en las estructuras desarrolladas por los habitantes locales (pueblos indígenas, entre ellos) de acuerdo con su propia cultura y condición sociopolítica. Entonces, y sólo entonces, podremos hablar verdaderamente de autogobierno, de gobierno del pueblo".

No es la única ley preocupante

Durante el año pasado, han comenzado a hacerse sentir los impactos de otra nueva ley de importancia crucial para los pueblos indígenas, la nueva Ley Forestal. La ley, aprobada durante la última semana de la presidencia de B.J. Habibie en octubre de 1999, reconoce –por primera vez en la historia indonesia- la existencia de pueblos indígenas y sus derechos consuetudinarios a los territorios. Sin embargo, no pone a los derechos indígenas a la tierra bajo ningún tipo de protección automática del estado en virtud del título nativo. La ley tampoco contiene previsiones que estipulen la necesidad de incluir a los pueblos indígenas en los procesos de planificación del desarrollo concerniente a su tierra. Lejos de que se les ofrezcan títulos permanentes, las comunidades indígenas locales están obligadas a formar cooperativas para solicitar derechos de uso y manejo sobre sus dominios ancestrales; en el proceso, tienen que competir con firmas comerciales a las cuales se les otorga el mismo derecho de solicitud para permisos de extracción de recursos sobre áreas habitadas por pueblos indígenas.

Además, la nueva ley forestal, con su tendencia general hacia la "silvicultura social", prevé la reclasificación de algunas partes de lo que otrora era exclusivamente clasificado como "Bosques del Estado", como *Hutan Kerakyatan Adat* o "Bosque Consuetudinario del Pueblo". Los derechos de uso sobre estas partes de territorios aldeanos son ubicados bajo la jurisdicción de las comunidades locales respectivas, quienes son libres de mantener derechos exclusivos sobre la explotación de recursos forestales u otorgar acceso a ellos a intereses externos. Muchas comunidades locales, severamente presionadas económicamente, han visto esto como una oportunidad de hacer dinero rápido, sin comprender los peligros. Centenares de patrones indonesios y malayos (*cukong*) han tratado de capitalizar esto adquiriendo los llamados *Izin Pemanfaatan Kayu* (IPK) o *Izin Pemanfaatan Hasil Hutan* (IPHH) de las comunidades indígenas. Por la promesa, generalmente vacía, de suministrar bienes valiosos a las comunidades (como semillas de arroz de alto rendimiento o un camión para la comunidad) o proveerlas con campos de arroz irrigados o un suministro de agua una vez que el bosque haya sido talado, y generalmente a cambio de sumas de dinero, los *cukong* adquieren así el derecho a despojar el bosque. Como muchas compañías desaparecen sin cumplir con sus promesas, muchas comunidades indígenas han terminado frustradas y amargadas, lo cual, sin embargo, no impide a otras entrar en los mismos acuerdos fraudulentos y ambientalmente destructivos.

Por lo tanto, una de las crueles ironías de la era de "reforma" en la Indonesia post Suharto es que los ambientalistas y, tardíamente, las comunidades indígenas vienen a darse cuenta que, en alguna forma, la fórmula del "bosque para los que viven en el bosque" ha resultado un tiro por la culata. Una consecuencia no intencional, pero predecible, de la democratización del acceso al bosque y sus recursos es que las comunidades locales están poniendo los beneficios a corto plazo por sobre las consideraciones a largo plazo y se han transformado, así, en cómplices voluntarios de la destrucción de sus bosques.

La autoorganización de los pueblos indígenas e iniciativas para una reforma política

No obstante, el año pasado se pudo registrar algunos desarrollos positivos en forma de reformas políticas a nivel local. Algunas comunidades indígenas han logrado redactar proyectos de ley para ser aprobados por asambleas legislativas locales (DPRD) a nivel de distrito o provincial. Algunas de estas leyes, si son aprobadas, ayudarán mucho a la afirmación del reconocimiento de la existencia de los pueblos indígenas y su soberanía sobre los territorios ancestrales, incluyendo los derechos al manejo de recursos naturales y el respeto por la cultura local.

Sanggau en Kalimantan Occidental, Bali y Lombok en Nusa Tenggara Occidental, Maluku Sudoriental y Toraja en Sulawesi Sur son algunos de los distritos de la República donde las comunidades indígenas han logrado redactar proyectos legislativos locales. Aunque no todos ellos han sido formalmente presentados a la legislatura local, al menos han sido propuestos y discutidos con los gobiernos locales, las asambleas legislativas locales y otros interesados.

No es de sorprender que algunos de estos proyectos de leyes exijan que la *desa*, la más baja unidad administrativa de gobierno, teñida como está por sus funciones como herramienta de la manipulación del gobierno, sea reemplazada por estructuras autóctonas de autogobierno.

Sulawesi es quizá la región donde la implementación de la Autonomía Local ha atraído la respuesta más entusiasta de ONGs, organizaciones indígenas y otros interesados en el manejo de recursos naturales y en la reforma agraria. Excepto Kalimantan Occidental, Maluku Sudoriental y Lombok, probablemente no haya ninguna otra región donde los pueblos indígenas y las ONGs cooperen tan bien para presentar las aspiraciones del pueblo y lanzar iniciativas políticas para afirmarlas. Los *pakava, toraja* y *muna* han enmarcado sus propios proyectos de ley relativos a la autonomía y el manejo de recursos naturales. Toraja se ha desarrollado incluso en algo como un proyecto piloto para que las ONGs exploren las posibilidades de alcanzar una autonomía local significativa mediante el trabajo con las legislaturas locales.

Según informes de ***Nusa Tenggara Oriental (NTT)***, han habido repetidas reuniones a nivel de *kampung* (aldea) para discutir la revitalización de instituciones políticas tradicionales y sistemas de manejo de recursos dentro de territorios ancestrales. Los *kuan hiun*, en los distritos de Soe y Kefa, lograron motivar al gobierno local para que revocara una regulación que niega la existencia de tierra *adat* (consuetudinaria / ancestral). En los mismos distritos, las comunidades locales también han reclamado exitosamente tierra ancestral de una plantación industrial de árboles (HTI o *Hutan Tanaman Industri*).

En ***Sumatra***, el movimiento indígena ha realizado progresos significativos con respecto a la revitalización de instituciones de manejo consuetudinario de recursos naturales. Sumatra del Norte, Sumatra Occidental, Jambi y Riau, son algunas de las provincias en donde las organizaciones indígenas, junto con ONGs locales han trabajado arduamente para forzar al gobierno local y a los inversores a reconocer su soberanía sobre los dominios ancestrales y el derecho a la autogestión de sus propios recursos naturales.

En el contexto del trabajo de AMAN, han surgido algunas nuevas organizaciones indígenas a nivel comunitario. En Kalimantan Oriental, por ejemplo, se fundó AMA (Alyansi Masyarákat Adat) Paser, una organización de pueblos indígenas que viven en el Distrito Paser.

Conflictos – agrarios, comunales, separatistas

Sin embargo, sustancialmente, la base territorial de las comunidades indígenas sigue estando bajo una severa presión en todo el archipiélago.

En ***Sumatra de Norte***, son corrientes los conflictos entre comunidades indígenas y el gobierno sobre tierra y otros recursos naturales. Durante el año pasado, aldeanos indígenas han organizado frecuentemente acciones de masas (p. ej., bloqueo del acceso a sitios de operación de algunas compañías) y han llamado a audiencias públicas con los organismos ejecutivos y legislativos para presionar en favor del reconocimiento de su soberanía sobre la tierra y los recursos naturales. No obstante, generalmente estos esfuerzos han sido enfrentados con la represión por parte de la policía y el ejército. La mayor parte de los casos son conflictos agrarios que involucran a compañías de plantaciones de propiedad estatal (PTP) o son conflictos sobre el planeado desarrollo de facilidades públicas en áreas urbanas.

Aunque la represión policial es todavía una respuesta probable por parte del Estado cada vez que las comunidades indígenas se envalentonan, muchos grupos indígenas de todo el archipiélago se han hecho más asertivos en la promoción de sus propios sistemas de gobierno político y del derecho consuetudinario. Algunas comunidades también están señalando orgullosamente el hecho de que, revitalizando y manteniendo formas tradicionales de resolución de conflictos, han logrado impedir que sus comunidades se lanzaran a la violencia comunal. Por ejemplo, cuando la isla de Kei Kecil fue destrozada por disturbios, *Raja* Johanes Rahail, el reverenciado jefe de una docena de aldeas cristianas en torno de Watlaar, en la isla de Kei Besar, en Maluku Sudoriental, logró impedir que la gente recurriera a las armas, por más alarmantes que fueran los rumores del exterior. Él les recordó que, de acuerdo al derecho consuetudinario, las comunidades sólo entran en guerra sobre disputas limítrofes y disputas que impliquen el honor de las mujeres, y como no existía ninguna acusación de tales ofensas contra los supuestos enemigos musulmanes, el pueblo de Watlaar debía permanecer fuera de la disputa.

Desgraciadamente, ninguno de esos remedios es disponible en *Aceh*, que es la provincia que exhibe el registro más triste de violaciones de derechos humanos desde 1989 y mayor cantidad de víctimas a causa de los conflictos. Aunque los intelectuales, académicos, élites políticas y observadores extranjeros estén debatiendo la autonomía, el problema de la insurgencia en Aceh está más lejos que nunca de una solución. El Presidente Wahid tomó inicialmente una posición mucho más moderada con respecto a los separatistas de la provincia que sus predecesores. Rechazó las exigencias del ejército de imponer otra vez la ley marcial y, en cambio, instruyó a sus negociadores que acordaran la renovación de una tregua que había estado vigente desde mayo de 2000. La nueva tregua, llamada patéticamente una "moratoria de la violencia", entró en vigencia el 15 de enero de 2001. Previamente, ya había anunciado la disposición del gobierno a permitir a la provincia adoptar la ley *sharia*, una difundida demanda en Aceh. A fines de este año, su gobierno también había adjudicado un paquete de ayuda de US$ 10,5 millones a la provincia para mitigar la pobreza causada por décadas de negligencia gubernamental.

No obstante, durante los primeros cinco meses de 2001, se hizo obvio que el gobierno de Wahid no tenía una concepción real de cómo resolver el conflicto en Aceh. Mientras que el año pasado había planteado una oferta de celebrar un referéndum sobre la independencia, luego lo rescindió, declarando que había querido significar un referéndum sobre la introducción del *sharia*. Sus promesas iniciales de corregir los errores del pasado han resultado vacías pues no ha logrado hacerlo en forma consecuente. Mientras tanto, el ejército dejó claro que se opondría a cualquier voto sobre la independencia "estilo Timor", por la fuerza, si fuera necesario. De acuerdo a la mayoría de los observadores externos, un referéndum justo en Aceh resultaría en un sonoro "sí" por la independencia.

Se suponía que la "moratoria" sería una oportunidad para que el gobierno y los rebeldes del Movimiento por Aceh Libre (Gerakan Aceh Merdeka, GAM) se sentaran en terreno neutral en Europa y discutieran los temas políticos que los separan. Esa oportunidad ha pasado sin sin haber sido aprovechada, no sólo porque ninguna de las partes se mueve de sus posiciones políticas iniciales sino también porque en la práctica, la tregua fue consecuentemente violada tanto por los rebeldes como por las fuerzas de seguridad. Simultáneamente con la represión del ejército de los activistas independentistas papuanos occidentales en octubre de 2000, el Ministro de Defensa indonesio, Mahfud M.D., había declarado que pondría fin a este "enfoque persuasivo" con respecto a la insurgencia en Aceh porque, dijo Mahfud, la buena voluntad que había mostrado había sido traicionada por el GAM. No obstante hay muy poca evidencia de que las mismas fuerzas de seguridad se hayan sentido alguna vez atadas a la letra del acuerdo. Durante toda la tregua actual y pasada, la policía siguió haciendo operaciones de rastrillaje, ostensiblemente para apoderarse de armas y perseguir a sospechosos simpatizantes de GAM. Bajo la cobertura de una tregua, continuaron las incursiones mutuas y la "desaparición" de sospechosos simpatizantes de los rebeldes por parte de elementos del ejército. Durante el año 2000 fueron muertas más de 1.200 personas –en su mayor parte civiles- en Aceh, y solamente durante los tres primeros meses de este año, solamente, al menos 250 más resultaron muertas.

Quizá el conflicto que fue seguido más de cerca por los extranjeros fue el de los indígenas *dayak* contra los migrantes madureses en Sampit y otras áreas de ***Kalimantan Central.*** Durante más de un mes, el área estuvo repleta hasta el borde por la presencia de equipos de camarógrafos y periodistas, cuando los hombres tribales dayak, en su mayoría *ngaju* y *ot danum*, cazaban colonos de la estéril isla de Madura, fuera de la punta nororiental de Java. La historia que estaban buscando era el relato de la "nueva generación de cazadores de cabezas" (un titular del Washington Post) cuyas espadas estaban otra vez "comiendo gente" y cuyos guerreros estaban reviviendo esa "práctica tribal en desuso" en defensa de sus territorios y del "orgullo étnico". Los hogares europeos y americanos fueron inundados con las desagradables imágenes de saqueadores salvajes y sus víctimas decapitadas y destripadas pero, generalmente, las tropas escandalizadas de periodistas de guerra se molestaron muy poco en respaldar sus trofeos visuales con investigaciones convincentes sobre las razones económicas y políticas de la carnicería "atávica" que habían atestiguado.

La parte indonesia de Borneo ha sido testigo durante los pasados años de varios estallidos de violencia contra inmigrantes de Madura, y los perpetradores no siempre fueron dayak. Las más notorias son las sangrientas purgas de madureses del interior de Kalimantan Occidental por parte de dayak entre enero y marzo de 1997, donde mataron a unos 500 migrantes - según estimaciones no oficiales incluso hasta 1.000 o 2.000- y expulsaron a más de 10.000 de sus hogares. Las mismas áreas fueron en parte la escena de otra ronda de enfrentamientos exactamente dos años antes, cuando nativos *malay* de Sambas, Kalimantan Occidental, se levantaron para expulsar a los madureses de su distrito, dejando como resultado 200 muertos del lado madurese y desplazando permanentemente a otros 60.000, la vasta mayoría de los cuales languidece hasta el día de hoy en campamentos de refugiados en la capital provincial, Pontianak.

La misma Kalimantan Central despliega una historia bastante larga de conflictos entre los nativos dayak y los madureses. Los dayak señalan al menos 16 instancias de derramamiento de sangre aunque menos enfrentamientos desde 1972, los cuales, dicen, tenían origen invariablemente en actos de violencia –acuchillamientos o violaciones- cometidos por los madureses. La mayoría de estos asesinatos y las sangrientas escaramuzas que a veces ocasionaron fueron abandonados a la propia mediación de las dos partes; las pocas oportunidades en que provocaron una intervención policial fueron "solucionadas" de una forma típica del "Nuevo Orden" para solucionar problemas: bajo los auspicios de las fuerzas de seguridad, las partes en guerra, representadas por líderes acreditados por el gobierno, con muy poca credibilidad en sus respectivas comunidades, fueron forzadas a firmar "acuerdos de paz" que no eran esfuerzos muy genuinos de reconciliación sino más bien rituales de sumisión a la autoridad estatal, dejando intocados los problemas básicos de los dos bandos. Después de dos importantes enfrentamientos en Kotawaringin Timur en julio y diciembre de 2000, quedó claro que había una bomba de tiempo haciendo "tictac", pero las autoridades pretendieron no notarlo.

Los ánimos todavía estaban caldeados cuando estudiantes liceales dayak y madureses entraron en disputa alrededor de mediados de enero de 2001 en el puerto maderero de Sampit, Kotawaringin Timur. Un colono madurese conocido, según los dayak, por su proclividad criminal, levantó la ira del lado dayak cuando intervino en la disputa. El 18 de febrero, los dayak atacaron su casa y mataron a tres miembros de la familia del hombre, y luego una gran multitud madurese trató de incendiar una casa dayak, con 39 personas que se habían refugiado allí. La ciudad de Sampit pronto se vio envuelta en una guerra total entre los dos grupos y ambas partes saquearon e incendiaron casas y mataron a cualquier persona al alcance de la mano. Durante un día y medio los madureses, que eran más numerosos que los dayak en la ciudad, tuvieron las de ganar. Sin embargo, pronto cambió la fortuna, porque al atardecer del 29 de febrero los dayak retornaron, reforzados por miles de hombres de los campos circundantes. Ahora, cientos de casas madureses en las afueras del pueblo fueron incendiadas, y sus habitantes, si no escaparon a tiempo, fueron masacrados. Fueron incendiados poblados madureses en gran parte del interior, y cientos de inmigrantes fueron asesinados. Miles de hombres, mujeres y niños madureses usaron cualquier forma disponible de transporte para escapar de las masacres, agolpándose en los cuarteles generales de la policía de la ciudad o tratando de escapar de Sampit. El gobierno envió navíos de la marina para evacuar a todos los refugiados posibles pero, para cientos de ellos, la ayuda llegó demasiado tarde.

En un plazo de días, la violencia se había extendido a Kuala Kayan, un subdistricto a 110 km. al norte de Sampit y a Palangkaraya, la capital provincial, a unos 220 km. de distancia. Aunque las matanzas en el epicentro de los disturbios finalizaron cuando todos los madureses habían sido muertos o expulsados, las purgas siguieron en el interior. Tan recientemente como el 21 de abril, todavía se informaba que había cacerías humanas de inmigrantes en el distrito sudoriental de Kuala Kapuas y en el más occidental, Pangkalanbun. Los líderes dayak amenazaron con que habría más muertes mientras que se pudieran encontrar madureses en la provincia. La cifra oficial de muertos en los disturbios es de unas 500 personas, pero fuentes locales indican que pudo haber entre 2.000 y 3.000 muertos. Un total de 40.000 madureses fueron evacuado a centros de refugiados en Java Oriental y Madura, donde tendrán que permanecer sin ninguna perspectiva de poder retornar jamás a Kalimantan. La mayoría nació probablemente en Borneo y nunca ha visto la isla donde sus padres o abuelos habían vivido antes.

Las fuerzas de seguridad fueron lentas en reaccionar a la crisis de Kalimantan Central. La policía, así como las unidades del ejército que fueron llamadas para restaurar el orden, fueron vistas paradas e inactivas mientras que las casas eran incendiadas y se cometían matanzas. En realidad, un acontecimiento que sorprendió a los reporteros extranjeros más que a los observadores internos fue que el 27 de febrero la policía y el ejército comenzaron a dispararse entre sí en los muelles de Sampit. Como se supo después, el objetivo eran las suculentas tarifas que la policía y el ejército habían comenzado a pedir a los refugiados por el favor de rescatarlos de la zona de guerra. En vez de voltear sus armas contra los saqueadores y asesinos, las fuerzas de seguridad las usaban para pelear una guerra entre especuladores. Para los entendidos, la funesta conducta de los soldados y la policía no es una sorpresa ya que la "seguridad interna es lo último que tienen en la mente", como dijo un diplomático occidental. En cambio, una misión en Kalimantan Central significa para los hombres uniformados una oportunidad de enriquecerse con la explotación maderera ilegal, el juego de azar ilegal y la prostitución. Además de esto, existe una larga rivalidad entre el ejército y la policía, la cual probablemente fue uno de los componentes de las dificultades para restaurar la ley y el orden.

Así como el desastroso enfoque de "no inmiscuirse" de las fuerzas de seguridad era completamente previsible, también lo eran los desventurados intentos de las autoridades de tratar de identificar las causas de la carnicería. Al comienzo, los funcionarios presentaron los disturbios como la obra de dos enfadados funcionarios públicos dayak que iban a perder sus trabajos administrativos en una reestructuración administrativa.

Sin embargo, ni los intentos de las autoridades para encontrar chivos expiatorios ni una prensa extranjera que acudió a imágenes de salvajes dayak pueden dar esperanzas de echar luz sobre las causas reales de la carnicería. Lejos de tener sus orígenes en motivos personales intrascendentes o en una etnicidad primordial, las actuales matanzas en Kalimantan Central, igual que las de Kalimantan Occidental en 1997 y 1999, reflejan un agudo conflicto sobre los recursos naturales y la herencia de más de 30 años de marginación política de la población indígena dayak por parte de elementos foráneos.

Hace tiempo que los dayak de Kalimantan se sienten subrepresentados en la forma en que sus cuatro provincias son gobernadas. Aunque en el período anterior a 1965 había gobernadores dayak en Kalimantan Central y Occidental (quienes, por otro lado, gozaron de tremenda popularidad entre las poblaciones indígenas de la provincia), desde entonces los cargos más elevados del gobierno provincial han sido el dominio exclusivo de los oficiales militares javaneses. En cuanto a Kalimantan Central, fue más fácil incluso para los dirigentes madureses ascender a posiciones de poder que para los nativos dayak, un hecho que es el más disturbador pues, en los ojos de la población indígena, la provincia de Kalimantan Central fue una vez otorgada por el primer presidente del país, Sukarno, a los dayak como su principal reserva.

Las semillas de los conflictos económicos fueron plantadas hace más de 30 años cuando el gobierno de Suharto comenzó a enviar a agricultores sin tierra de las superpobladas Java, Madura y Bali, a las menos densamente pobladas islas más alejadas. Desde los años 70 y sobre todo durante los años 80, el Gobierno de Indonesia recurrió a adjudicar grandes áreas de bosques primarios como concesiones madereras y para plantaciones de palma oleaginosa y de otro tipo, sin consideración por la propiedad o uso indígena de la tierra. Transmigrantes patrocinados por el gobierno y emigrantes espontáneos (los madureses figuran predominantemente entre estos últimos) proveyeron la mano de obra para estos proyectos. Se hizo muy poco para mitigar el choque entre los grupos, étnica y religiosamente diversos, súbitamente ubicados en una situación de competencia sobre oportunidades económicas limitadas. El programa oficial de transmigración y el aliento estatal de la migración en general "incorporó el conflicto en el código genético de las provincias", como dijo un diplomático residente en Yakarta.

El resentimiento local contra los madureses tiene tres factores específicos. Aunque ellos mismos eran pobres, no-capacitados y socialmente dislocados, como recién venidos los madureses ocuparon frecuentemente tierras agrícolas de propiedad dayak. Además de esto, también dominaron el comercio pequeño en los pueblos y proveyeron la fuerza de trabajo que se ocupa de las existencias de madera - en desaparición-, que son controladas por el ejército y otros intereses comerciales de Yakarta. Aunque las áreas de tierras y las oportunidades laborales usurpadas a los dayak por los inmigrantes madureses pueden ser insignificantes comparadas con la cantidad de acres enajenados por el Gobierno como concesiones madereras o plantaciones, los madureses ofrecen un blanco más fácil para el resentimiento que las poderosas corporaciones y los rapaces generales del ejército.

Estos factores económicos están exacerbados por las diferencias culturales. La cultura maduresa pone fuerte énfasis en el honor personal y los hombres madureses son herederos de una vigorosa tradición marcial. Los habitantes de Borneo y otros indonesios los caracterizan como rudos, violentos y peleadores. Son conocidos por recurrir a métodos particularmente pavorosos para afirmarse en la lucha por la tierra que caracteriza a la "frontera" de Kalimantan, como cuando cosechan los cultivos de otras personas e invaden a sabiendas tierras ajenas.

Entonces, aunque en forma estructural los dayak y los madureses deben ser considerados como víctimas de las políticas económicas y políticas del régimen de Suharto y sus colaboradores corporativos, desde una perspectiva local hay diferencias y agravios suficientes como para explicar por qué se lanzaron los unos contra los otros.

Fuentes

Kompas, 18, 19, 20, febrero, 2001.
Kompas, 13 - 20, julio, 2000.
Media Indonesia, 18, 19, marzo, 2001.
Far Eastern Economic Review.
The Economist, Christian Science Monitor.
Inside Indonesia.
Südostasien.
The Jakarta Post.
R. Yando Zakaria en *Pemulihan Kehidupan Desa dan UU*, No. 22 Tahun 1999, trabajo presentado en el taller de "Penguatan Dewan Perwakilan Rakyat Daerah ..."
R. Yando Zakaria y Noer Fauzi en *Pembaruan Desa dan Agraria Dalam Konteks Otonomi Daerah* documento de posición de Badan Pembaruan Agraria.
Entrevista telefónica con algunos de los miembros del Consejo Nacional de AMAN y activistas de ONGs a nivel local.
Proyecto de ley de Bali, Pakava, Sanggau, Maluku Tenggara.

MALASIA

El desarrollo de los temas indígenas en Malasia parecen estar cada vez más dictado por dos dinámicas principales: el panorama político (especialmente en lo que afecta al destino del partido en el poder) y las intervenciones de los mismos pueblos indígenas (para asegurar su propio destino y procurar resarcimiento). Ambas dinámicas tienen diferentes motivaciones pero ambas sirven hoy para alterar aun más el contexto político y social de los pueblos indígenas de Malasia.

Política y pueblos indígenas

Es incuestionable que la forma en que está estructurada la política nacional y local, y la rápidamente cambiante dinámica política resultante de esto (especialmente en lo relativo a la política electoral), han tenido un impacto sobre la forma en que los pueblos indígenas de Malasia son percibidos y tratados.

Por ejemplo, dada la división en el voto malayo de la península y la consiguiente inseguridad política del partido gobernante, Frente Nacional, el voto de la minoría *orang asli* se ha convertido en un voto crucial en ciertos distritos electorales, especialmente en el estado de Pahang, rico en madera. Por esta razón, la coalición gobernante ha apurado sus programas, plagados de retórica, para los orang asli, repartiendo (o al menos así anunciándolo) fondos para el desarrollo de las comunidades en las áreas del interior o repitiendo las promesas de entrega de parcelas tituladas para ellos en los nuevos programas de reasentamiento.

También en forma previsible, dado que se descubrió que las mujeres fueron una importante reserva de votos en las últimas elecciones generales, la coalición gobernante dirigió su atención hacia las mujeres orang asli (y sus votos). En particular, propuso el aumento de sus centros de desarrollo para la mujer en áreas orang asli de apenas 3 en 1998 a 27 en el 2001. Irónicamente, ninguno de los centros existentes está dirigido por mujeres orang asli, aparentemente porque no había mujeres orang asli que reunieran las calificaciones necesarias para ocupar tales puestos. Sin embargo, este engaño fue expuesto en el año 2000 cuando, una vez que se corrió la voz de que dos de esos puestos estaban vacantes, ocho mujeres orang asli adecuadamente calificadas solicitaron los puestos. No obstante, ninguna de ellas fue aceptada, ni siquiera considerada, quizá de acuerdo a la tendencia a disminuir lentamente la cantidad de orang asli que detentan posiciones en el mismo departamento que se supone debe administrarlos, el Departamento de Asuntos Orang Asli (JHEOA).

En el estado del este de Malasia, Sabah, las continuas maniobras políticas entre las élites indígenas han reducido efectivamente la participación y el dominio indígena en la arena política del pico que alcanzó a mitad de los años 80 a niveles donde el interés individual egoísta ahora eclipsa la motivación de trabajar por el bien de la población indígena. La decadencia de la autonomía indígena en Sabah fue sellada aún más con la introducción una década más tarde, sin precedentes en el estado, del partido peninsular malayo-musulmán UMNO. Su presencia cambió invariablemente el clima político del estado en gran desmedro de la mayoría indígena. A estos efectos, una estrategia temprana fue la polarización del electorado en líneas religiosas – entre electorados indígeno-musulmanes, indígenas no-musulmanes y no-indígenas (es decir dominados por los chinos). Esto condujo efectivamente a un rechazo de los partidos multiraciales, causando que los grupos indígenas no-musulmanes en particular, se dividieran en cuatro partidos políticos. Ninguno de ellos puede tener la esperanza de volver a ganar el poder por sí mismo o incluso como una coalición si los modelos de votación siguen las líneas religiosas.

Sin embargo, en el otro estado oriental malayo, Sarawak, se espera que las elecciones estatales sean realizadas en el 2001. A pesar de lo desigual del campo de juego político y la ausencia de una oposición unida y creíble, existe algún potencial de alterar el status quo. Esto se debe a que temas que son muy importantes para los grupos indígenas *orang ulu* y *dayak* están ubicándose otra vez en primer plano. Indudablemente existen temas de muy larga data que están relacionados con su demanda de los derechos consuetudinarios nativos (NCR) sobre sus tierras – demandas que son persistentemente ignoradas por el gobierno y sus funcionarios. No obstante, no cabe duda que la rápida enmienda del Código de Tierras de Sarawak en el año 2000, adoptado sin suficiente consulta y consenso por parte de los grupos indígenas, constituye la más reciente amenaza, sutil pero sin embargo importante, contra los derechos indígenas en Sarawak. En esencia, la enmienda procura restringir aun más las demandas de las comunidades indígenas sobre los derechos nativos consuetudinarios sobre su tierra, mientras que al mismo tiempo permite al gobierno estatal extinguir tales derechos consuetudinarios con mayor facilidad. Cuando se introdujo por primera vez el Código de Tierras en 1958, quedó claro que los límites de esas tierras NCR iban a ser determinados de acuerdo al espíritu y los métodos de las leyes y prácticas consuetudinarias de las comunidades indígenas afectadas. No obstante, las enmiendas del 2000 eliminaron efectivamente esta previsión, imponiendo así una carga indebida a los grupos indígenas para plantear sus demandas de tierra NCR.

Desarrollo e invasión

Durante el año pasado, las tierras indígenas siguieron siendo invadidas por corporaciones y gobiernos, resueltos a considerar a los pueblos indígenas como una molestia necesaria en la búsqueda de su propio enriquecimiento. La explotación maderera sigue siendo el mayor culpable. En enero de 2001, indígenas *penan* de Long Sayang y Long Belok, en Ulu Baram, Sarawak, erigieron bloqueos en los caminos madereros construidos por Lajong Lumber (subsidiaria de Rimbunan Hijau), una de las mayores compañías de Sarawak que también ha expandido sus operaciones al extranjero. En Sabah, las actividades madereras en Long Pasia, ubicada dentro del área Ulu Padas, de 80.000 hectáreas ricas en biodiversidad, están amenazando antiguos cementerios, plantas medicinales, recursos pesqueros y animales y los asentamientos históricos del pueblo *lun dayeh*. Los orang asli de Malasia Peninsular también han tenido que enfrentarse al otorgamiento de más y más concesiones madereras que invaden invariablemente sus tierras tradicionales. En el área de Sungei Lepar, en Pahang, por ejemplo, los *jakun* establecieron bloqueos a comienzos de 2001 cuando camiones y actividades madereras plantearon un peligro a la seguridad de la comunidad y amenazaron sus medios de subsistencia. Sin embargo, manteniendo su estrategia política de no enfadar a los orang asli por miedo a perder sus votos, el Ministro Estatal para Asuntos Orang Asli fue inmediatamente al área y, en medio de una amplia publicidad de los medios de difusión, entregó compensación monetaria a los aldeanos para aplacarlos.

Pero la extracción maderera está siendo rápidamente reemplazada por megaproyectos de desarrollo como el factor particularmente más devastador que afecta las tierras y las culturas indígenas. A diferencia de las actividades madereras, los megaproyectos de desarrollo (como enormes proyectos de plantaciones, represas y otros proyectos industriales) no sólo causan daño ambiental sino que también se apropian permanentemente de las tierras de los pueblos indígenas. El Establecimiento de Procesamiento de Pulpa y Papel de Sabah, de US$ 5,3 mil millones, que va a ser establecido en Kalabakan, Tawau implicará el talado de 220.000 hectáreas de bosque cerca de la Cuenca de Maliau y las áreas de Conservación del Valle Danum. La propuesta acería de un multimillonario costo en dólares, cerca de Kudat, en el norte de Sabah, es otro ejemplo. En Malasia Peninsular, la construcción de represas también está afectando las vidas de los orang asli. La Represa Sungei Selangor, por ejemplo, cuya construcción comenzó en el año 2000, finalmente invadió las tierras tradicionales de dos aldeas *temuan*. También se ha dado aprobación para la construcción de otra represa en el estado de Pahang, que también afectará a los temuan del área Klau.

En Sarawak ya se ha comenzado con ese tipo de megaproyectos y los efectos sobre la población indígena son evidentes. El gigante proyecto de la Represa Hidroeléctrica Bakun, suspendido dos veces en el pasado debido a falta de fondos, ahora ha sido revivido una vez más. No obstante, las1.700 familias indígenas que fueron reasentadas en 1997 ya están experimentando las dificultades y consecuencias previstas. Por ejemplo, no sólo el suelo del área de reasentamiento no es fértil, sino que también es demasiado arenoso para la agricultura de subsistencia. Además, la población originalmente reasentada (de aproximadamente 10.000 personas) ahora ha aumentado en un 40 por ciento, requiriendo así unidades de vivienda adicionales. Las mismas unidades de vivienda son objeto de quejas. A pesar de haber sido mal diseñadas y construidas, tienen un precio injustificado y exorbitante y están demasiado lejos de los campos de subsistencia. El resultado de todo esto son frecuentes conflictos comunales, especialmente sobre recursos en agotamiento, alcoholismo creciente (especialmente entre los hombres) un alto índice de abandono estudiantil, pérdida de independencia de las mujeres como resultado de las cambiantes relaciones sociales y escasez de alimentos.

Aparte de las compañías madereras y los inversores industriales, los pueblos indígenas de Sarawak también enfrentan la amenaza de la pérdida de sus tierras consuetudinarias a manos de corporaciones agroempresariales y agencias especializadas en el desarrollo de la tierra. El conflicto tuvo consecuencias fatales para los usurpadores al menos en un caso. Sucedió en Ulu Niah, cuando Sarawak Oil Palm Berhad quería ocupar las tierras consuetudinarias de dos comunidades *iban* con el respaldo tácito de las autoridades estatales. La corporación empleó matones armados para infundir temor a los pueblos nativos con la esperanza de que abandonaran sus tierras consuetudinarias. Estos gángsters, viendo que la policía no tomaba acción con respecto a las numerosas denuncias policiales presentadas contra ellos, se pusieron más agresivos hasta que el inevitable choque entre ellos y los aldeanos resultó en la muerte de cuatro de los matones. No obstante, diecinueve aldeanos fueron acusados de asesinato y fueron detenidos durante 18 meses antes de que su caso fuera tratado en noviembre de 2000. Ocho fueron finalmente declarados no imputables en marzo de 2001 pero los once restantes todavía están en prisión aguardando la conclusión de su juicio.

Reafirmación de la identidad y de los derechos indígenas

No obstante, la justicia parece ser el recurso final para varios grupos indígenas en su lucha por los derechos territoriales. Uno de los casos involucró al megaproyecto Establecimiento de Pulpa y Papel de Borneo y su plantación forestal, que ha causado mucha inquietud y trastornos a la población nativa en Bintulu y Sibu, Sarawak. Este es un proyecto del Gobierno del Estado de Sarawak y la Corporación de Desarrollo de la Industria Maderera de Sarawak (STIDC) que involucra a 606.200 hectáreas de tierra. Gran parte de esta tierra es tierra nativa consuetudinaria que pertenece a los pueblos *iban, kenyah, kayan, buketan, punan* y los pueblos minoritarios *tatau dan lugat*. Se ven afectadas un total de 180 "casas largas" o comunitarias. Aunque algunas comunidades han aceptado ser reasentadas, otras decidieron combatir la apropiación de sus tierras y buscaron justicia en las cortes. El caso fue oído a fines del año 2000 y ahora se espera una decisión.

En Sabah, la comunidad *dusun* de Ulu Apin-Apin, Keningau, también está recurriendo a la justicia para oponerse al derecho del estado a otorgar concesiones madereras en el área protegida forestal de desagüe de la cual dependen las comunidades indígenas para su subsistencia. En Malasia Peninsular, el caso de siete temuan (quienes perdieron parte de sus tierras tradicionales cuando fueron adquiridas en 1996 para la construcción de la autopista al Aeropuerto Internacional de Kuala Lumpur) retomó sus audiencias en diciembre de 2000. Los orang asli procuran una declaración que establezca que ellos son los propietarios de la tierra debido a la costumbre, los detentadores del título nativo de la tierra y los detentadores de los derechos de usufructo. También exigen que sus derechos consuetudinarios y propietarios sobre la tierra que ellos y sus ancestros han ocupado y cultivado durante largo tiempo no sean extinguidos por ninguna ley. El gobierno estatal y el federal, por su parte, alegan que el derecho otorgado a los orang asli estaba relacionado solamente con la ocupación y la residencia y no con la propiedad. La audiencia finalizó en marzo de 2001 y se espera que pronto se produzca una decisión sentadora de precedentes sobre este caso.

Aparte de llevar al gobierno ante la justicia a causa de sus tierras consuetudinarias, los pueblos indígenas de Malasia también están afirmando su identidad de diversas maneras. Por ejemplo, la Celebración del Día del Guerrero (*Bujang Berani*) en Sarawak, un evento de base organizado anualmente para conmemorar la vuelta a casa de los guerreros dayak que habían sido injustamente detenidos por la policía por establecer bloqueos para proteger sus tierras consuetudinarias hace once años, fue celebrado otra vez en octubre de 2000 en el área de Bakun Superior. En Sabah, grupos indígenas locales siguen organizando Intercambios Culturales que no sólo sirven para reafirmar su identidad cultural indígena sino que también funcionan como medios para unir, bajo sus propios términos, a los diversos grupos indígenas del estado. Hasta ahora, estas reuniones *Pertemuan Budaya* han sido celebradas en áreas interiores como Terian y Kinabatangan.

En Malasia Peninsular, argumentando que la unidad en número y cultura es una forma de afirmar su presencia, y consecuentemente de demandar sus derechos, la rama Perak de la Asociación Orang Asli de Malasia Peninsular (POASM) se ha embarcado en un programa para "estandarizar" la cultura orang asli. Sin embargo, no queda claro en qué medida la rama, dominada por *semai*, será capaz de convencer a los otros subgrupos étnicos de que abandonen sus propias tradiciones a cambio de las del grupo dominante. No obstante, en cierta medida ha tenido éxito al lograr que algunos grupos acepten el tercer sábado de febrero como el *Hari Perayaan Orang Asli* o el Día Festivo Orang Asli. La primera de esas celebraciones comunes fue realizada el 24 de febrero de 2001 y fue principalmente celebrada por los semai de las tierras bajas de Perak. Sin embargo, algunas otras comunidades endosaron la propuesta –como los temuan de Bukit Bangkkung y los *mah meris* de Pulau Carey- e hicieron coincidir su celebración anual con esa fecha.

Aparte de los derechos territoriales y la identidad indígena, los pueblos indígenas de Malasia también se han ocupado de otros temas. Uno de estos es la amenaza a sus recursos biológicos y el robo de su conocimiento indígena para obtener beneficios comerciales. Con este fin, los líderes y comunidades indígenas participaron en discusiones relativas a la certificación de la madera de sus áreas y en la redacción de leyes referentes a la extracción y uso de los recursos biológicos. Sin embargo, la participación indígena en estas acciones sigue siendo limitada. En un intento de encarar algunos de estos temas, la Red de Pueblos Indígenas de Malasia (JOAS), en colaboración con la Facultad de Derecho de la Universidad de Malasia, organizó una mesa redonda en marzo de 2000 con la participación de representantes gubernamentales, académicos e indígenas sobre el tema Biodiversidad y Conocimiento Indígena. Esta mesa redonda representa otro de los muy variados medios que están usado los pueblos indígenas de Malasia para afirmar sus derechos y su diferencia cultural.

TAILANDIA

Durante los pasados 50 años, las comunidades de las tierras altas [1] de Tailandia han enfrentado serias presiones de agentes externos, en particular del gobierno, para que se adapten y acepten políticas y actividades de desarrollo que modifican su estilo de vida y sus prácticas de manejo de recursos. Esto ha tenido como resultado un intento de cambio a nuevos sistemas agrícolas y métodos de producción, junto con nuevas tecnologías y equipos que alteran su estilo de vida tradicional y diferente. Algunos representantes de la población tailandesa de las tierras bajas [2] argumentan que las comunidades montañesas están sobreexplotando los recursos naturales del país en las tierras altas, con el resultado que la población de las tierras bajas reclama su derecho a convertir áreas y reservas forestales en áreas protegidas. Esto, a su vez, condujo a serios conflictos entre los dos grupos. En ultima instancia, como escribe un académico, "tal conflicto es una violación directa de los Derechos Humanos básicos de las comunidades de las tierras altas".[3]

Estas comunidades no están sometidas solamente a la presión a través de invasiones de tierras individuales sino que la sociedad, en su conjunto, no respeta adecuadamente y no acepta su derecho a las tierras tradicionales. Esta opinión está en realidad apoyada por el Estado y la ley Federal relativa al control y manejo de los recursos naturales. A la idea de que los pueblos montañeses son destructores del bosque se suman acusaciones más fuertes, por ejemplo, que los pueblos montañeses son responsables de la difusión de narcóticos. Además, los montañeses son frecuentemente considerados como "no-tailandeses" o extranjeros ilegales.

Conflictos sobre políticas de desarrollo de las tierras altas

Las actuales políticas relativas a las comunidades montañesas del norte de Tailandia se concentran en el problema de la seguridad nacional en áreas fronterizas, la prevención de la deforestación y el control de los narcóticos. Estas políticas son implementadas en "El Plan General sobre el Control de la Droga y el Desarrollo Ambiental y Comunitario". Sin embargo, los miembros comunitarios de las tierras altas no participaron directamente en las tomas de decisiones o en el proceso de planificación relacionado con este Plan General. El proceso de planificación sigue siendo altamente centralizado, etnocéntrico y discriminatorio con respecto a la elaboración de políticas relativas a la toma de decisiones de las comunidades de las tierras altas. Se pone poco énfasis en la participación de las poblaciones que constituyen el objetivo. Aunque el gobierno tailandés ha prometido centrarse en la participación del pueblo, la libertad, la protección de derechos básicos y en la toma de decisiones descentralizada, las comunidades de la montaña siguen siendo víctimas de iniciativas de desarrollo mal concebidas y mal planificadas, y están sujetas a condiciones y reglas estrictas asociadas con estos programas, corriendo el riesgo de que se les impongan más restricciones sobre sus tierras y más violaciones de sus derechos.

Cuando analizamos la situación de los derechos de los pueblos de las tierras altas de Tailandia debemos tener en consideración las políticas previas y actuales. El 6 de enero de 2001, el Reino de Tailandia fue a las urnas de votación y eligió un nuevo gobierno bajo la dirección del Dr. Thaksin Shinawatra. Hasta la fecha, es claro que el gobierno ha retornado a enfoques de políticas previas relativas a las comunidades de las tierras altas, centrándose en mecanismos políticos sobre la represión de la droga y la resolución de conflictos limítrofes. Hasta ahora el nuevo gobierno no ha establecido ninguna política clara relativa a los derechos y la situación de las comunidades de las tierras altas.

En suma, los conceptos y políticas de desarrollo de las tierras altas desde el pasado hasta el presente han sido implementados bajo el estandarte de la seguridad nacional, resultando en intentos de integrar y asimilar a grupos étnicos minoritarios a la sociedad tailandesa. Independientemente del enfoque utilizado - ya sea el enfoque estático centrado en el bienestar social y mitigación de la pobreza o el enfoque del desarrollo dinámico, que pone énfasis en el problema de la droga y la seguridad nacional - al concentrarse fundamentalmente en el manejo de recursos naturales y tecnologías agrícolas mejoradas, se ha impuesto un cambio considerable a las comunidades de las tierras altas, además de las restricciones impuestas a través de la protección de áreas de cuencas y la creación de parques nacionales.

Temas relativos a los derechos y a la seguridad

Dos principales políticas afectan directamente el estilo de vida y la supervivencia de los pueblos de las tierras altas, a saber: 1. La política de manejo forestal de las tierras altas, y 2. La política sobre ciudadanía. Estas políticas, aunque no parezcan relacionadas a primera vista, están en realidad estrechamente vinculadas.

La política de manejo forestal de las tierras altas

Durante la década pasada, el gobierno creó medidas políticas para la conservación de recursos naturales, reforestación y mejora de las cuencas, y para resolver el problema del deterioro de la fertilidad del suelo en el norte de Tailandia. Sin embargo, estas políticas omiten reconocer el hecho de que existen actualmente 873.713 personas que viven en estas áreas protegidas.[4] Tales políticas no sólo conducen a conflictos e incertidumbre sobre el manejo de estos recursos entre los organismos gubernamentales y los pueblos de las tierras altas sino que también crean problemas en términos del clima social, económico y político de las áreas de las tierras altas.

Con respecto a la silvicultura, el gobierno ha utilizado cuatro leyes en nombre del Manejo de Recursos Naturales: la Ley Forestal (2484 BE) de 1941, la Ley de Conservación Forestal (2507 BE) de 1964, la Ley de Parques Nacionales (2504 BE) de 1961 y la Ley de Protección y Conservación de la Fauna (2535 BE) de 1992. Cuando se considera el concepto y el detalle de estas leyes, se descubre que las mismas fueron implementadas e introducidas durante el período en que el gobierno aumentó las medidas para tomar control del manejo de los recursos naturales distinguiendo solamente entre dos clases de derechos territoriales: derechos privados de tenencia de la tierra y derechos territoriales del gobierno. Toda la tierra que no era de propiedad privada era considerada como bajo control del Estado.

Conforme a estas leyes, aquellas personas que viven en esas áreas no tienen derechos legales sobre la tierra, independientemente de la cantidad de tiempo que hayan residido en el área. En algunas instancias, estas comunidades vivían en estas áreas -ahora protegidas- antes de la creación de la ley. Puede verse que hay ciertos vacíos en la actual Ley Forestal que han sido explotados para propósitos capitalistas individuales, resultando en una mayor presión sobre los recursos naturales. Esto, a su vez, crea un conflicto entre los departamentos gubernamentales, los habitantes locales y las organizaciones populares a nivel comunitario.

En última instancia, el problema es causado por la usurpación de tierras en áreas de comunidades de las tierras altas y una creciente inmigración a los bosques. Esto demostró ser el catalizador de una continua fricción entre las comunidades de las tierras altas y aquellas autoridades que desean tomar control del manejo forestal, conservar las cuencas y tratar de forzar a los pueblos de las montañas a abandonar sus tierras tradicionales. Esto se hace con referencia a la creencia incorrecta, pero común, de que los pueblos de las tierras altas no pueden manejar estos recursos de una forma sustentable.

La política de ciudadanía

La política relativa a la ciudadanía es compleja y está estrechamente vinculada a políticas sobre seguridad nacional, deforestación y narcóticos. Los pueblos de las tierras altas reciben raramente la plena ciudadanía tailandesa conforme a la Constitución del Reino de Tailandia debido a su supuesto papel en el tráfico de drogas, la deforestación y la seguridad nacional. Se ha reconocido que esta falta de ciudadanía es el tema más importante que enfrentan hoy los pueblos de las tierras altas. Afecta directamente su seguridad personal y conduce a la pérdida de otros derechos básicos, como el derecho a ganarse la vida, el derecho a usar el bosque de una forma sustentable, el derecho a participar en actividades de desarrollo y el derecho a tener acceso a facilidades y servicios gubernamentales.[5]

Hasta la fecha, el proceso de otorgamiento de la ciudadanía ha sido lento y complicado y las solicitudes de ciudadanía pueden ser canceladas en cualquier estadio de los procedimientos si los aplicantes son considerados como una amenaza a la seguridad nacional. Hoy, el número de personas de las tierras altas que todavía esperan que el gobierno les otorgue la ciudadanía es de 509.110 de una población total de 873.713. Esta cifra no incluye a otros grupos minoritarios.[6]

El Ministerio del Interior introdujo recientemente nuevas reglamentaciones relativas al otorgamiento de ciudadanía, las cuales clasifican a los pueblos de las tierras altas en diferentes períodos de tiempo, dependiendo de cuándo ellos o las generaciones pasadas inmigraron a Tailandia. Otra clasificación se centra en el estatus legal de los padres. Sin embargo, como se explicó antes, este proceso sigue siendo complicado, lento y confuso.

De acuerdo a la clasificación del Ministerio del Interior de los grupos de las tierras altas, aquellos que tienen la oportunidad de obtener la ciudadanía tailandesa deben cumplir con los siguientes criterios: ser personas actualmente residentes en Tailandia que inmigraron al país entre 1913 y 1972. Se estima que hay aproximadamente 100.000 personas que entran en esta categoría.

Los habitantes de las tierras altas que residen actualmente en Tailandia y que emigraron allí entre el 14 de diciembre de 1972 y el 3 de octubre de 1985 tienen derecho al estatus de residentes permanentes (aproximadamente 90.000 personas). Sus hijos tienen derecho a la ciudadanía tailandesa. Se estima actualmente que hay aproximadamente 120.000 personas que entran en esta categoría.

Las personas que entran en la tercera clasificación de habitantes de las tierras altas son consideradas residentes ilegales y pueden ser expulsadas del país por la fuerza. Hay actualmente 190.000 personas consideradas como pertenecientes a esta categoría. El gobierno abrió una ventana para presentar solicitudes de ciudadanía del 29 de agosto de 2000 hasta el 29 de agosto de 2001; durante este período las personas de las tierras altas pueden solicitar que su situación sea revisada y solicitar la ciudadanía del Reino de Tailandia. Al finalizar este período, el gobierno y el Consejo de Seguridad Nacional utilizarán medidas severas para forzar a las personas de las tierras altas no registradas y a otras minorías a abandonar el país. El problema para la mayoría de esas personas quienes, de hecho, no tienen derecho a recibir la ciudadanía tailandesa, es que no pueden presentar la documentación apropiada como prueba y, por lo tanto, su solicitud es rechazada. Esos problemas están complementados por la siempre presente mano de la corrupción a todos los niveles del proceso de otorgamiento de la ciudadanía.

Movimientos civiles de los pueblos de las tierras altas

El movimiento civil popular de las tierras altas, apoyado por la Red de Asambleas de Tribus Nacionales Montañesas y otras ONGs, opera a dos niveles: niveles comunitarios y políticos.

En el ámbito político, el objetivo de la Asamblea de la Red Nacional de Tribus de la Montaña, otras ONGs y pueblos de las tierras altas en su conjunto, es concentrarse en presentar una imagen correcta de los pueblos montañeses a la sociedad en general. La falta de información y comprensión de los pueblos de las tierras altas del norte de Tailandia por parte de la sociedad tailandesa en general, perpetúa estereotipos y discriminación. Por lo tanto, se considera importante reducir el etnocentrismo, promover una mayor aceptación, comprensión mutua y eliminar las desigualdades a través de la educación y la divulgación de información. Se debe cambiar la imagen de los montañeses como destructores del bosque, no-tailandeses, una amenaza a la seguridad nacional y causa del problema de la droga en Tailandia si se quiere lograr algún progreso real con respecto a los derechos de los mismos.

La divulgación a todos los otros niveles debe implicar una alianza popular que trabaje a todos los niveles de la sociedad, basando el movimiento sistemáticamente en la participación del pueblo desde sus bases. El movimiento adoptó el concepto de toma de decisiones descentralizada, coordinación efectiva y promoción de ideas nuevas e innovadoras.

Trabajar a *nivel comunitario* significa coordinación de las redes de trabajo de los pueblos de las tierras altas y el fortalecimiento de la Asamblea Nacional de las Tribus Montañesas para que pueda avanzar con objetivos poderosos y claros. La estrategia principal es alentar el aprendizaje y el intercambio de conocimiento entre las redes de trabajo de los pueblos de las tierras altas para aumentar su poder de negociación al expresarse con una voz fuerte y unificada. Se espera que esto promoverá la libertad de pensamiento, alentará y sustentará la dignidad y el orgullo, y reducirá la opresión por parte de administradores, políticos y la sociedad tailandesa en general.

El éxito de cualquier movimiento civil depende de los actores involucrados. Por lo tanto, es necesario que los pueblos de las tierras altas promuevan un movimiento de ese tipo a nivel comunitario. Si los pueblos de las tierras altas no tienen una voz fuerte y unificada, los problemas como el derecho a la tierra y a la ciudadanía no pueden resolverse. No sólo está en juego el derecho a la tierra, bosques y agua sino derechos y libertades humanos básicos.

Notas

[1] En este documento, se usa el término comunidades de las tierras altas para designar a los pueblos, generalmente llamados minorías étnicas, tribus montañesas o pueblos indígenas, que viven en las regiones montañosas del norte de Tailandia.

[2] Los términos habitantes de las tierras bajas y habitantes de las tierras altas se usan para diferenciar entre minorías étnicas que tienden a residir en áreas altas y la más amplia población tailandesa que vive a niveles más bajos de elevación.

[3] Charernwong, S.2543 (2000). "Panha KhwamKadYangLaeKanLaMerd SittiBukkhon-BonTheeSoong, Amphur ChomgThong Chiang Mai" (Conflictos y violaciones de los derechos de los pueblos de las tierras altas: Un caso de conflicto en el Distrito Chom Thong, Chiang Mai).

[4] Cifra: Centro de la Oficina de Registro sobre la Emisión y Consideración del Estatus de la Persona en el Registro de Familias de Habitantes de las Tierras Altas; 2543 BE (2000) p. 211.

[5] Debe reconocerse que el problema de la ciudadanía no sólo se aplica a las comunidades étnicas de las tierras altas sino también a otras minorías étnicas que viven en áreas limítrofes en toda Tailandia.

[6] Cifra: Centro de la Oficina de Registro sobre la Emisión y Consideración del Estatus de la Persona en el Registro de Familias de Habitantes de las Tierras Altas; 2543 BE (2000) p. 211.

CAMBOYA

La mayoría de los habitantes de Camboya pertenecen a la etnia khmer y viven principalmente en las tierras bajas del país. Además, también hay lao y cham de origen chino y vietnamita. En Camboya también viven diferentes pueblos indígenas de las tierras altas, que habitan las montañas de las provincias de Ratanakiri, Mondulkiri, Kratie, Stung Treng, Pursat, y Kompong Speu[1].

Desde el comienzo de la paz en los años 90, áreas que anteriormente eran remotas se hicieron más accesibles. Como son ricas en recursos naturales como madera, tierra y fauna, atraen a colonos, compañías madereras y cazadores furtivos quienes invaden las tierras y bosques comunales de los indígenas montañeses.

Al mismo tiempo se ha desarrollado un proceso de consulta para discutir y responder a las necesidades y derechos de los pueblos indígenas entre el Gobierno Real de Camboya (RGC), Organizaciones No-Gubernamentales (ONGs), Organizaciones Internacionales (OIs) y representantes de las comunidades indígenas.

Cambios en el acceso a los recursos naturales durante los años 2000-2001

En el año 2000 continuó el talado ilegal, aunque a un ritmo más lento que en años previos. La madera es cortada para el uso privado o para exportar a Tailandia y Vietnam. En los distritos de Kon Mon, Bokeo y Banlung, en la provincia de Ratanakiri, los habitantes locales están insatisfechos pues los funcionarios nombrados para imponer la prohibición de talado hacen la vista gorda al talado en el área. Los pueblos indígenas también están enfrentados a una normativa doble pues los oficiales policiales no reaccionan frente al talado en gran escala pero imponen rígidamente la ley sobre los aldeanos locales cuando quieren cortar madera para la construcción de viviendas.

En el distrito de Taveng, en Ratanakiri, la pesca tradicional está amenazada porque personas externas a las aldeas indígenas pescan en el río usando redes ilegales y choques eléctricos. Se ha otorgado una concesión pesquera debido a la cual todo el río está bloqueado con una pared de bambú, privando a los aldeanos que viven río abajo de su pesca.

Los aldeanos a lo largo del Río Se San afectados por los vertidos de agua de la represa Yali Fall, en Vietnam, siguen exigiendo una información más precisa sobre los vertidos pues siguen ocurriendo accidentes. El director de la represa Yali Fall envía mensajes a las autoridades provinciales de Rata-

Un camión maderero Hero abre un nuevo camino a través de una zona boscosa en Ratanakiri. Foto: archivo de IWGIA nakiri uno o dos días antes de los vertidos de agua planificados pero la comunicación con las aldeas afectadas no es efectiva.

Asuntos de derechos territoriales

La Nueva Ley de Tierras

En junio del año 2000, el Ministro de Tierras y Urbanización y el Presidente del Comité de Resolución de Conflictos de Tierra se reunieron con representantes del Banco Asiático de Desarrollo (ADB) de Camboya, las Filipinas y Australia y representantes de ONGs y OIs para discutir la propuesta versión khmer del proyecto de ley, en el cual los más cruciales párrafos del capítulo sobre pueblos indígenas han sido dejados de lado. Se acordó mantener el contenido del texto original en inglés, aunque ligeramente alterado y sin defender tan fuertemente los derechos territoriales tradicionales de los pueblos indígenas como lo hubieran querido las ONGs y las OIs. En julio del año 2000, el Consejo de Ministros (CoM) aprobó la ley revisada. Esta ha sido enviada ahora a la Asamblea Nacional para su aprobación, después de la cual, el Senado también necesitará discutirla y aprobarla.

El Rey Norodom Sihanouk apoyó públicamente la inclusión de las necesidades de los pueblos indígenas en la ley de tierras y en julio otorgó una audiencia a cinco representantes de pueblos indígenas de la provincia de Ratanakiri, quienes querían agradecer al Rey por su ayuda y solicitar su apoyo para que las necesidades de los pueblos indígenas también se vieran reflejadas en la ley forestal que está siendo actualmente redactada. Además de garantizar su apoyo, el Rey prometió construir una clínica de salud y una escuela en la comuna de Poey, en el distrito de Taveng de la provincia de Ratanakiri, ambas inauguradas el 29 de diciembre del año 2000.

Negociación de tierras

El 23 de marzo, un juez provincial de Ratanakiri sentenció en contra de las comunidades indígenas que habían estado luchando durante dos años para mantener 1.250 hectáreas de sus tierras ancestrales fuera de las manos del general Noun Phea, del ejército de Phnom Penh, quien los ha defraudado. La tierra fue "comprada" a aproximadamente 247 familias *jarai* y *tampuan* de las aldeas de Chrong, Chet y Klik en el distrito de Bokeo. Se pagaron U$S 35.000 a funcionarios del distrito pero los aldeanos, con excepción de un paquete de sal, no recibieron nada por la venta de tierras. La impresión dactilar sobre el acuerdo fue hecha solamente por un puñado de personas y no por todas las familias. Y aquellos que firmaron, la mayoría analfabetos, dijeron que no comprendieron que los documentos enajenaban sus tierras. Los aldeanos alegan que los funcionarios del distrito y un soldado local que trabaja en nombre de Noun Phea prometieron que se construiría una escuela, un nuevo camino y pozos de agua si firmaban los documentos.

Los abogados de las comunidades indígenas, Ea Sopheap y Yim Simene de la Asistencia Legal de Camboya, cuestionaron la imparcialidad del juicio, quejándose de que el juez se negó a considerar documentos presentados en la sala del tribunal el mismo día. Los abogados declararon que apelarán contra la decisión en un tribunal de Phnom Penh y se espera que sea tratada dentro del plazo de siete meses.

Este caso judicial es considerado un hito ya que su resultado dará una señal en cuanto a cómo los empresarios pueden o deben comportarse en futuras negociaciones de tierra.

Silvicultura

Silvicultura comunitaria

Una serie de planes de manejo forestal comunitario han recibido el endoso provincial en todo el país. Uno de los ejemplos es el traspaso de la protección y manejo de casi 5.000 hectáreas de bosque semiperenne (oficialmente dentro de la concesión maderera Hero Taiwan de 60.000 hectáreas) a la Asociación de Silvicultura de la Comunidad Ya Poey, compuesta por representantes de seis aldeas indígenas de montaña en la provincia de Ratanakiri, que han vivido y usado el bosque durante generaciones (Phnom Penh Post, 2001).

Un equipo de ADB, en consulta con representantes de ONGs y OIs involucradas en la forestería comunitaria, preparó Directivas Nacionales para la Silvicultura Comunitaria. Estas directivas establecen el derecho de aprobación y facilitación de planes de manejo a nivel provincial. Sin embargo, el Departamento de Silvicultura y Fauna (DoFW) del Ministerio de Agricultura, Silvicultura y Pesca (MAFF) insiste en que el poder de toma de decisión final reside en el Ministerio. Esto dificulta mucho la apelación de las comunidades indígenas en caso de que su solicitud de manejo forestal comunitario fuera rechazada por el Ministerio. El DoFW indica que no tiene la intención de aplicar el subdecreto de silvicultura comunitaria hasta que la ley forestal en preparación sea aceptada.

La nueva Ley Forestal

El proceso de redacción de la ley forestal se desarrolló sin ninguna participación pública significativa para no demorar el proceso (como fue el caso anteriormente con la ley de tierras). El proceso de redacción, tal como fue presentado por el MAFF, recibió muchas críticas de ONGs/OIs, tanto en relación con el contenido como con el proceso.

Las ONGs/OIs y los pueblos indígenas comenzaron una campaña de abogacía para la toma de conciencia sobre la importancia de los bosques para la subsistencia de los habitantes rurales y cómo han manejado el uso de los recursos forestales y protegido los bosques contra la explotación excesiva durante siglos. La campaña también tiene como objetivo concientizar sobre los impactos y peligros que plantea la silvicultura industrial a estos sistemas de uso y manejo local. También se llama la atención sobre la necesidad de un enfoque multidisciplinario por parte de los departamentos involucrados en la planificación del uso de la tierra (LUP) y que la LUP debería actuar a nivel provincial para permitir el acceso del pueblo a los procesos de toma de decisión.

El Foro de ONG monitorea los desarrollos a nivel nacional relativos a la ley forestal y las políticas forestales y mantiene informadas a las ONGs.

Concesiones forestales

El subdecreto de concesiones forestales de febrero del año 2000 requiere la formación de comités consultivos comunitarios en las áreas de concesiones forestales. Estos comités necesitan el reconocimiento gubernamental pero es una condición previa que los comités hayan recibido capacitación provista por la Oficina Provincial de Silvicultura. En la provincia de Ratanakiri, esto se hará en colaboración con la ONG "Proyecto de Productos Forestales No Maderables", pero el contenido de la capacitación es todavía desconocido. Todavía no se ha ofrecido ningún tipo de capacitación y los comités consultivos, aunque ya están formados, todavía no han sido reconocidos.

La Asociación de la Industria Maderera Camboyana, con sede en el DoFW, está elaborando directivas para el manejo de concesiones. Para noviembre de 2001, todas las concesiones tienen que tener un plan de implementación para elaborar un plan de manejo. Se tiene que incluir evaluaciones de impacto social y ambiental (S/EIA). Las ONGs están informando a las comunidades de los requisitos de los S/EIA para que puedan prepararse.

Acceso a la gobernación y a la toma de decisiones

Los indígenas están sumamente subrepresentados en el gobierno nacional y en los gobiernos provinciales. Están principalmente representados a nivel comunitario y aldeano. También dentro de las ONGs y OIs, sólo están empleadas unas pocas personas indígenas y, de éstas, sólo un pequeño número trabaja a nivel de programas y de administración. Esto ha atraído ahora la atención de las organizaciones y el gobernador de Ratanakiri, y se han identificado varias estrategias para otorgar a los indígenas un mayor acceso a los procesos institucionales. Estas incluyen creación de empleos y capacitación entre los pueblos indígenas dentro de los programas de las ONGs y del gobierno, o la introducción de juntas asesoras de pueblos indígenas para la preparación de talleres y conferencias importantes y actividades similares.

No obstante, sólo una pequeña cantidad de indígenas completa la escuela primaria y muy pocos pasan a la educación secundaria o superior. Este limitado acceso a la educación se debe a la falta de escuelas y maestros y a que anteriormente los padres no veían mucho valor en la educación ofrecida ya que no se relacionaba con sus vidas cotidianas. Ahora las actitudes están cambiando ya que consideran a la educación como importante para poder manejar los cambios sociales y económicos de hoy.

El trabajo de lobby por la inclusión de necesidades específicas de los pueblos indígenas en la ley de tierras y a nivel nacional, aunque basado en discusiones con las comunidades indígenas a nivel aldeano y provincial, fue realizado por personal de las ONGs y OIs en nombre de los pueblos indígenas. Durante los últimos años, los indígenas montañeses de la provincia de Ratanakiri se han familiarizado más con las reuniones, talleres y negociaciones, y su participación directa en el trabajo de lobby por los temas de los indígenas montañeses a nivel nacional podría destacar su voz. Existen planes para apoyar a un grupo promotor de pueblos indígenas para crear relaciones y comprensión entre las comunidades indígenas, funcionarios del gobierno y miembros del parlamento, explicando su situación de vida, cultura y necesidades específicas.

Participación de las mujeres en la toma de decisiones

Tradicionalmente, el gobierno aldeano está formado por el consejo de ancianos, dominado por los hombres y establecido por los mismos aldeanos. Sumándose a los sistemas de dirección tradicionales y del gobierno, las agencias de desarrollo han introducido una variedad de comités de desarrollo. Aunque todos estos comités tienen representantes de ambos sexos, las mujeres son minoría.

El aporte de las mujeres en los sistemas de dirección tradicionales y gubernamentales, así como en los comités de desarrollo, es limitado. Una de las mayores razones de la falta de confianza de las mujeres es que frecuentemente no conocen muy bien la lengua khmer. Esto excluye también a muchas mujeres de la información y de la obtención de conocimiento. La pesada carga laboral de las mujeres es una dificultad adicional seria para su participación tanto en reuniones como en sesiones de capacitación.

Aunque todavía hay importantes vacíos y disparidades, las actividades reductoras de la carga laboral, la capacitación de género, las actividades de creación de confianza y capacidad, junto con la educación no-formal, han tenido como resultado progresos tangibles en la creación de relaciones de género más igualitarias en la toma de decisión y en el reparto de la carga laboral. Esto constituye también un significante fortalecimiento de la confianza y capacidad de las mujeres para participar en la vida pública y económica.

Red de Mujeres Indígenas Ratanakiri

La Red de Mujeres Indígenas Ratanakiri (IWNR) fue creada en 1998. Los miembros tienen claro ahora lo que quieren y planean elaborar un plan estratégico y clarificar los objetivos y estrategias, así como los roles y responsabilidades de los miembros de la red. Una miembro asistió a la Conferencia Internacional sobre "Resolución de Conflictos, Construcción de la Paz, Desarrollo Sustentable y Pueblos Indígenas", celebrada en Manila en diciembre del año 2000. Dos miembros participaron como investigadoras en el estudio de género de PNUD/CARERE para desarrollar una estrategia de género para el Proyecto de Recursos Naturales Comunitarios.

Asociación de Indígenas Montañeses

En 1993, individuos indígenas ubicados en posiciones gubernamentales de alto nivel que vivían en la capital de Ratanakiri tomaron la iniciativa de formar una Asociación de Indígenas Montañeses (IHA). En 1995, la IHA fue oficialmente registrada como una ONG en el Ministerio del Interior, aunque la Asamblea Nacional todavía tiene que dar su autorización. Esta primera iniciativa no fue muy exitosa pues había muy poca comunicación con la gente de las mismas comunidades indígenas. Recientemente, uno de los iniciadores solicitó asesoramiento de otros funcionarios gubernamentales indígenas de alto nivel y del personal de ONGs/OIs para establecer una asociación más activa y dinámica. Se decidió traspasar la dirección a indígenas "comunes" y consultar primero ampliamente con cada grupo étnico para determinar el nivel de apoyo para la creación de una IHA, así como también evaluar la opinión del pueblo, prestando especial atención a las opiniones de las mujeres, jóvenes y ancianos, destinatarios de las metas y funciones de tal asociación.

Juventud indígena

Durante el año pasado, los jóvenes también recibieron alguna atención. NTFP organizó una "escuela de verano" para estudiantes indígenas sobre trabajo de desarrollo participatorio y sustentable. En diciembre del año 2000 se realizó un taller para adolescentes indígenas en Ratanakiri, financiado por NORAD, sobre los derechos del niño.

Note

[1] Por más antecedentes, ver el capítulo sobre Camboya en *"El Mundo Indígena 1999-2000"*. Los ejemplos provienen principalmente de la provincia de Ratanakiri pues el autor está más familiarizado con esta provincia.

Fuentes

Informantes calificados

Graeme Brown, Department of Environment, Ratanakiri, Asesor sobre Silvicultura Comunitaria.

Tiann Monie, Asistente de Abogacia por la Tierra de PNUD/CARERE y miembro de la Red de Mujeres Indígenas Ratanakiri.

Gordon Patterson, Non Timber Forest Products Project, Ratanakiri, Coordinador.

Sang Polrith, Administrador Provincial de Proyectos de PNUD/CARERE, Ratanakiri.

Referencias

"Community forest gives hope to hill tribes". *Phnom Penh Post*, enero 5-18, 2001.

Actas de la reunión de CAC, Ratanakiri, febrero 2, 2001.

"Court Rules Against Hill Tribes in Ratanakiri". *The Cambodia Daily*, marzo 24-25, 2001.

"Hill Tribe's Lawyer To File Appeal Next Month". *The Cambodia Daily*, marzo 27, 2001.

VIETNAM

Las minorías étnicas de Vietnam están constituidas principalmente por pueblos indígenas de la montaña. Hay 53 grupos minoritarios reconocidos en Vietnam, que representan aproximadamente 9,9 millones de personas (el 13,6% de la población). De estas, casi 8 millones residen en las montañas. Sólo los chinos (hoa), *khmer* y algunas minorías *cham* viven en las tierras bajas. Las 53 minorías reconocidas no representan la cantidad real de culturas y lenguas de Vietnam. Algunos grupos han sido "amalgamados" en etnologías gubernamentales, así que la cantidad real puede ser 60 ó más. Algunos de los grupos viven solamente en una o dos aldeas y suman menos de 200 personas.

Desarrollo de las tierras altas y políticas de conservación forestal

El gobierno de Vietnam tiene muchas políticas y programas para promover el desarrollo de las tierras altas, que incluyen la infraestructura, silvicultura, educación y el cuidado de la salud. Pero muchos de estos programas han registrado sólo resultados limitados. El reasentamiento de comunidades minoritarias y la promoción de la agricultura sedentaria basada en el arroz húmedo son políticas gubernamentales que han tenido muy poco éxito. La mayor parte de los pueblos de las tierras altas han dependido de los sistemas agrícolas swidden durante cientos de años pero en vez de examinar de cerca cómo funcionan estos sistemas, el gobierno decidió que eran desperdiciadores o ineficientes y se diseñaron programas para detener la agricultura rotativa. En algunas áreas, las minorías detuvieron la agricultura rotativa, pero esto no siempre ha resultado en ingresos más elevados o mejor calidad de vida. En algunos casos, el reasentamiento implicó importantes cambios en el estilo de vida, para los cuales no estaban preparados los grupos minoritarios. Las estructuras tradicionales culturales y comunitarias fueron dañadas y en muchas áreas esto tuvo como resultado problemas sociales como abuso del alcohol, juegos de azar, etc.

Culpar a los pueblos de las tierras altas de la deforestación debido a la agricultura rotativa ha desviado la atención de las verdaderas causas de la deforestación en Vietnam: compañías madereras, proyectos importantes de infraestructura como represas y cultivos comerciales a gran escala como el café. Otros cultivos industriales, como el eucalipto también han tenido impactos negativos. La causa fundamental de la deforestación es la apertura al mercado de la economía del país. Las compañías madereras contratan personas locales para talar los bosques y les ofrecen ingresos muy altos. Por ejemplo, en una aldea *hmong* en la provincia de Son La, una compañía de Hanoi dijo a los aldeanos que les construirían un camino para que pudieran vender su maíz. La compañía expresó que sólo quería cortar unos pocos árboles a cambio. Felizmente, una ONG local pudo recaudar fondos para que los aldeanos pudieran construir ellos mismos un camino.

Pero, en general, aunque el gobierno tiene una política de protección del bosque, la atracción del dinero es demasiado grande. En la mayoría de los casos, son kinh (vietnamitas) de las tierras bajas quienes tienen los recursos para ir a las tierras altas y talar grandes cantidades de árboles.

Otra fuente de deforestación son los cultivos comerciales. El café es ahora un cultivo importante y da grandes ingresos en las Tierras Altas Centrales. En este caso, son otra vez personas kinh de las tierras bajas que encuentran formas de persuadir a las comunidades minoritarias para que vendan la tierra o corten el bosque para abrir nuevos campos. Algunas de estas áreas están protegidas pero la gente soborna a aquellos que se supone que protegen el bosque. Sólo los kinh de las tierras bajas tienen dinero suficiente para hacer este tipo de pagos.

El eucalipto fue introducido al país a comienzos de los años 90. Fue promovido como una solución para todo el país y fue plantado en todos lados. En muchos casos, los aldeanos expresaron claramente que no querían plantar eucaliptos, y algunos científicos estaban de acuerdo con ellos. Pero no tenían opciones y la influencia del eucalipto sobre los sistemas de conocimiento local fue muy severa. El eucalipto expulsa toxinas al suelo,

Viviendas de pobladores kinh en la provincia de Daklak, Tierras Altas Centrales de Vietnam. Foto: archivo de IWGIA

En un poblado de los mnong ralam, uno de los pueblos indígenas de la provincia de Daklak. Foto: archivo de IWGIA

impidiendo que crezcan otros árboles o plantas. Esto es lo que pasó cerca de la fábrica de papel Bai Bang, financiada por Suecia, en el norte de Vietnam. Ahora, el error con respecto al eucalipto ha sido ampliamente reconocido y aceptado por el gobierno. Pero el empuje por cultivos industriales es todavía muy fuerte y no muestra signos de detenerse.

El impacto resultante sobre la biodiversidad y el conocimiento indígena es muy severo. El enfoque del gobierno ha sido similar al de muchos otros países: establecer áreas protegidas y reservas naturales con el objetivo de preservar especies raras y áreas forestadas. Desdichadamente, la implementación de estos programas generalmente ignoran, o excluyen completamente a los habitantes locales. Las comunidades indígenas han sido reasentadas fuera de las áreas protegidas en la creencia de que talan o dañan el bosque. Como ya se mencionó, generalmente quedan en una situación peor y en peligro de perder su cultura. En general, la idea de que los pueblos indígenas son los más capaces y están más dispuestos a proteger los bosques no es muy aceptada.

El programa de reforestación "cinco millones de acres" es otra de las políticas gubernamentales. Esto implica una suma substancial de dinero del gobierno para la reforestación. Pero no hay un enfoque real sobre quién es responsable de manejar y proteger los bosques existentes. El resultado es que los aldeanos están plantando nuevos árboles pero los bosques existentes son todavía talados a gran ritmo. Las empresas extranjeras contrataron aldeanos para plantar árboles, pero eso fue todo. Así que los aldeanos no tienen ningún sentido real de responsabilidad para proteger las áreas después que las han plantado. Sólo piensan que están plantado árboles para el gobierno, no para ellos mismos.

Sin embargo, gradualmente, algunos de los antiguos enfoques están siendo reemplazados por nuevos programas que ofrecen mayor participación a nivel local y oportunidades para que los habitantes de las tierras altas protejan su tierra. Después que el período de la agricultura colectiva finalizó en los 80, la privatización de las tierras se extendió en todo Vietnam. Ahora ha llegado hasta las tierras altas e incluye frecuentemente tierras boscosas. Los aldeanos de muchas áreas reciben ahora certificados de derechos de uso de la tierra para cultivos y certificados de tierras boscosas, que ofrecen todos los derechos asociados con la plena propiedad.

Algunos programas de silvicultura social, como un gran proyecto financiado por la agencia para el desarrollo del gobierno alemán, GTZ, en la provincia Son La, ofrecen incluso a los aldeanos la oportunidad de crear bosques comunitarios legalmente reconocidos. Gran parte del personal de las ONGs y funcionarios forestales del gobierno reconocen que esta es quizá la mejor manera de manejar y proteger los bosques. Sin embargo, el progreso es lento y generalmente no se presta suficiente atención al trabajo de cerca con los pueblos minoritarios –muchos de los cuales son analfabetos- para asegurar que comprendan las leyes y políticas relacionadas con la tierra. Los esfuerzos para asegurar que los agricultores comprendan sus derechos legales una vez que han obtenido certificados de uso de la tierra, son insuficientes. Además, aparte de unos pocos proyectos pilotos, los certificados de tierras son extendidos sólo a nombre del jefe de familia masculino, por lo que las mujeres quedan excluídas de los procesos.

El resultado es que los aldeanos, particularmente las mujeres, nunca sienten realmente que son responsables de la tierra o piensan que son impotentes para proteger los bosques de los extraños que quieren talar árboles.

Política educativa

Las muchas limitaciones de los programas educativos para las minorías étnicas de las tierras altas constituyen la raíz de este problema. La política nacional es promover el uso de la lengua vietnamita (kinh) para que las minorías puedan integrarse a las comunidades circundantes de las tierras bajas. En la práctica, esto significa que los alumnos de las minorías estudian en una lengua extranjera, así que aprenden muy despacio. Además, el programa escolar no está relacionado con sus vidas cotidianas, por lo que los alumnos pierden interés. Este es especialmente el caso de las niñas, muchas de las cuales siguen siendo analfabetas. Esto tiene un serio impacto sobre su capacidad de aprender nuevas habilidades más adelante en la vida, porque la participación en la mayoría de los programas de desarrollo requiere la capacidad de entender la lengua vietnamita. Tal como es hoy la situación, hay sólo unos pocos programas educativos pilotos en los cuales los alumnos son enseñados en sus lenguas nativas durante uno o dos años, antes de pasar a la instrucción en vietnamita.

Representación política

Como las minorías étnicas de Vietnam luchan con temas como los cultivos comerciales, los derechos a la tierra y la educación, un factor que trabaja en su favor es un grado respetable de representación política a nivel local, provincial y nacional. Aunque muchos políticos vietnamitas no comprenden muy bien los temas de interés de las tierras altas, muchos miembros del personal a nivel comunal y de distrito son reclutados entre los grupos minoritarios. También hay representación de las minorías étnicas a nivel provincial y nacional. El recientemente electo Secretario General del Partido Comunista, el cargo político más elevado de Vietnam, es miembro del grupo étnico *tay*, del nordeste.

Esta representación política ayuda a muchas ONGs, incluyendo a algunas organizaciones locales, a centrar sus esfuerzos en los temas de las minorías étnicas. Hay muchos proyectos en áreas como la silvicultura social y la educación que ofrecen nuevos modelos promisorios para hacer participar a los pueblos minoritarios en la sociedad. Sin embargo, el cambio positivo está limitado por el enfoque verticalista de muchos funcionarios del gobierno y una falta de conciencia sobre los temas de interés de las tierras altas entre la población mayoritaria.

Protestas masivas de pueblos indígenas en las Tierras Altas Centrales

A comienzos de febrero de 2001, las Tierras Altas de Vietnam fueron asoladas por protestas masivas por parte de sus pueblos indígenas. Las protestas, aparentemente bien coordinadas, tuvieron lugar en varias ciudades importantes de las provincias de Dak Lak y Gia, pero se concentraron en Pleiku, la capital de Gia Lai, donde se estima que 5.000 protestantes se lanzaron a las calles del 2 al 6 de febrero. Según informes de agencias de noticias, algunos de los manifestantes recurrieron a la violencia. Los edificios del gobierno fueron rodeados, se establecieron bloqueos de caminos y se cortaron líneas telefónicas. El gobierno reaccionó inmediatamente con un despliegue de tropas, policía antimotines y helicópteros. Se dice que veinte personas fueron arrestadas pero no se informó de víctimas. Según los medios oficiales de difusión, algunos policías fueron heridos y hospitalizados.

A los periodistas extranjeros se les permitió entrar sólo una vez al área y el contacto telefónico fue restringido para impedir que funcionarios locales, periodistas y miembros de organizaciones locales hablaran con la prensa extranjera. La totalidad de las Tierras Altas Centrales ha permanecido completamente cerrada desde ese entonces.

El gobierno reconoció a fines de marzo que las protestas habían comenzado realmente hace meses, en octubre de 2000, cuando cientos de jóvenes indígenas establecieron zonas cerradas donde se negaba la entrada a personas externas. El gobierno también admitió que los disturbios habían realmente continuado hasta marzo, contrariando previas proclamaciones de que las manifestaciones cesaron inmediatamente después de la intervención del gobierno. Según otros informes, ya había enfrentamientos aislados entre indígenas y colonos en agosto, cuando unos 150 miembros del pueblo indígena *ede* atacaron a colonos vietnamitas en el distrito H'leo de la provincia de Daklak.

Se ha sugerido que la razón inmediata para las grandes protestas fueron los temores de una creciente inmigración, que se difundieron a fines de enero. Según los rumores, las provincias de Daklak y de Gia estaban destinadas a recibir 100.000 de las 300.000 personas que iban a ser reasentadas debido al proyecto hidroeléctrico Son La, de US$ 3 mil millones, en el Norte de Vietnam. Las Tierras Altas Centrales ya han experimentado mucha inmigración, tanto planificada por el estado como, en años recientes, espontánea, lo cual ha cambiado profundamente su composición demográfica. A fines de siglo, la meseta y las montañas circundantes de las Tierras Altas Centrales tenían una población de unas 240.000 personas, casi todas indígenas. Debido a la masiva inmigración de kinh y de pueblos indígenas del norte, el número se ha elevado a casi 3 millones, siendo los indígenas menos de un tercio de la población actual. Antes cubierta por extensos bosques, las Tierras Altas Centrales se han convertido en el área de cultivo de café más grande del país. La mayor parte de la tierra buena está ahora en manos de migrantes.

Una razón adicional para la protesta ha sido, supuestamente, la represión del gobierno de la Iglesia Protestante, a la cual pertenece la mayor parte de los pueblos indígenas de la región. De acuerdo a algunos informes, la iglesia Protestante clandestina jugó un rol crucial en la organización de las protestas.

Las autoridades vietnamitas han acusado a exiliados anticomunistas de los Estados Unidos de estar detrás de las protestas. Según el periódico del Ministerio de Seguridad Pública, los disturbios fueron causados por agitadores que trabajan para ex miembros del Frente Unido para la Liberación de las Razas Oprimidas (FULRO, un acrónimo de su nombre en francés). FULRO es un grupo armado de resistencia de los indígenas de las Tierras Altas Centrales que ha luchado por la autodeterminación contra los sucesivos gobiernos vietnamitas desde fines de los años 50 hasta comienzos de los 90.

Fuentes:

Agence France-Presse, marzo 23, 27, 2001.
BBC News, febrero 7, 8, 9, 2001.
Far Eastern Economic Review, marzo 1, 2001.
Reuters, febrero 7, 2001.
South China Morning Post, marzo 28, 2001.

LAOS

Laos contiene una de las poblaciones más diversas étnicamente del Sudeste de Asia. El mayor grupo étnico, los lao, comprende aproximadamente el 30% de los 4,8 millones de habitantes de Laos (en el nordeste de la actual Tailandia viven muchos más lao que en Laos), mientras que el restante 70% comprende más de 230 grupos etnolingüísticos diferentes, pertenecientes a cuatro ramas etnolingüísticas principales: la tai-kadai, la austroasiática (familia mon-khmer), la hmong-mien y la sino-tibetana (familia tibeto-birmana) (OIT 2000: 3). Hay 80 grupos *mon-khmer*, y recientemente han sido identificados 10 nuevos grupos *vietic*. Los 47 grupos usados para la clasificación del último censo del gobierno son, por lo tanto, totalmente insuficientes.

A estos pequeños grupos étnicos no-lao se les designa usualmente como los pueblos indígenas de Laos. Oficialmente, estos pueblos hoy son llamados "grupos étnicos", "pueblos étnicos" o "lao son phau" ("lao no-étnicos"). El gobierno abandonó la anterior clasificación geo-morfológica -que, sin embargo, es muy común entre algunos funcionarios del gobierno y otras personas- de la población de Laos en "lao de las tierras bajas" (Lao Lum), "lao de las tierras medias/altas" (Lao Thoeng) y "lao de las tierras altas" (lao soung).

La actual política sobre minorías étnicas del gobierno de Laos

La Constitución de 1991 prevé el marco general de la política de Laos con respecto a los diferentes grupos étnicos. Prevé iguales derechos a la cultura y a las costumbres para todos los grupos étnicos, prohibe la discriminación entre grupos étnicos y da un mandato al Estado para promover la unidad e igualdad entre ellos y para implementar medidas que se ocupen del desarrollo económico y social de todos los grupos étnicos.

La actual política sobre pueblos indígenas o minorías étnicas fue formulada en la "Resolución de la Organización Central del Partido Concerniente a Asuntos sobre Minorías Étnicas en la Nueva Era" de 1992. En un reciente informe de la OIT, los autores concluyen que: "En realidad es difícil identificar artículos específicos en el Convenio Nº 169 de la OIT con los cuales la política laosiana esté en conflicto. En una reciente reunión consultiva convocada por el LFNC [Frente Lao para la Construcción Nacional] en septiembre de 1999, donde el Convenio fue presentado a ejecutivos claves de los ministerios y agencias, incluyendo el Comité de Minorías Étnicas de la Asamblea Nacional, los asistentes expresaron su acuerdo con los contenidos del Convenio" (OIT 2000: 40). La respuesta positiva de los funcionarios del gobierno en la reunión consultiva organizada por la OIT da razones para tener esperanzas de que el gobierno de Laos considere eventualmente la ratificación del Convenio 169.

La actual política del Partido como se define en la Resolución de 1992 fue resumida por los autores del informe de la OIT de la forma siguiente (OIT 2000: 23):

1. Construir un sentimiento nacional (identidad nacional).
2. Lograr la igualdad entre las minorías étnicas.
3. Aumentar el nivel de solidaridad entre las minorías étnicas como miembros de la más amplia familia lao.
4. Resolver los problemas del pensamiento inflexible y vengativo, así como la desigualdad económica y cultural.
5. Mejorar las condiciones de vida de las minorías étnicas paso a paso.
6. Expandir, en la mayor medida posible, el bueno y hermoso patrimonio e identidad étnica de cada grupo, así como su capacidad de participar en los asuntos de la nación.

La Resolución prosigue identificando tareas esenciales a través de las cuales poder lograr los objetivos de la política. Entre otras, llama a "la resolución de desacuerdos entre miembros de la misma minoría étnica, entre minorías étnicas, entre minorías étnicas y funcionarios del gobierno, soldados y otros ciudadanos" y "establece que cuando ocurran violaciones de la política sobre minorías étnicas éstas deben ser resueltas inmediatamente por la autoridad pertinente y los ofensores deben ser castigados" (ibid.).

La Resolución exige además "concentración en la expansión de la educación, cultura, salud y otros beneficios sociales" mediante, entre otras cosas, la expansión de la educación primaria normal, la capacitación de maestros, la investigación de los sistemas de escritura de los *hmong* y *khmou*, el aumento de la red de cuidado de la salud "uniendo la medicina moderna y la tradicional", la divulgación de información en áreas remotas, especialmente mediante transmisiones radiales en lenguas indígenas, el nombramiento de funcionarios especialistas que hablen lenguas minoritarias, etc.

Es algo preocupante que mientras que la Resolución llama a la promoción y expansión del patrimonio cultural tradicional de cada grupo étnico, también llama a reducir y erradicar las "tradiciones atrasadas", sin especificar qué es lo que se considera "atrasado" (OIT 2000: 24).

Otro párrafo bastante problemático es el que llama a "un incremento de la producción y [canales de] distribución abiertos para cambiar el sistema económico 'natural' o 'semi-natural' por un sistema de producción de mercancías" y su énfasis en la necesidad de reducir la agricultura rotativa (OIT 2000: 232).

La Resolución prevé un cierto grado de reconocimiento de los derechos a la tierra de las comunidades indígenas, llamando a una política clara y estricta de adjudicación de tierras para cada familia (ibid.). Desgraciadamente, hay pruebas de que la adjudicación de tierras hasta ahora ha sido usada más bien como medio de reducir la agricultura rotativa en vez de proveer a las comunidades indígenas una seguridad sobre la tenencia de sus tierras tradicionales agrícolas y forestales.

Para aumentar "el nivel de la dirección del Partido en asuntos de minorías étnicas", la Resolución identifica la necesidad de (a) incrementar la identidad nacional y la solidaridad entre las minorías étnicas y capacitar a los funcionarios públicos, miembros del Partido y soldados para que comprendan el contenido de la política; y (b) mejorar el mecanismo del personal responsable de los asuntos étnicos y, a nivel central y provincial, establecer un mecanismo responsable específicamente de los asuntos étnicos bajo el Frente Lao para la Construcción Nacional (LFNC). Su administración central fue nombrada asesora de la Organización Central del Partido y del Gobierno, mientras que a nivel local, el comité del Partido deberá asistir al LFNC a realizar sus tareas (ibid.: 25).

Al LFNC se le da también el mandato fundamental de coordinar y asegurar la implementación de la política trazada en la Resolución mediante:

- Investigación de políticas que afecten a las minorías étnicas y divulgación de la resolución al "Buró Político para coordinar con los diversos departamentos a fin de lograr una verdadera implementación";
- Realizar seguimientos, evaluaciones e informar regularmente a la organización Central del Partido y el gobierno sobre el proceso de implementación de la política.
- Requerir a todas las agencias del nivel central coordinar con el LFNC.

La resolución es muy clara en su crítica de pasados errores y en su compromiso con una política mejorada y una implementación más determinada. Ya se han resaltado algunos aspectos como potencialmente problemáticos. Estos están parcialmente vinculados a programas gubernamentales ya existentes, que serán analizados brevemente a continuación:

Reducción de la agricultura rotativa y reasentamiento

A pesar de la política potencialmente favorable establecida en la Resolución del partido de 1992, algunos de los actuales programas gubernamentales realizados en áreas indígenas han demostrado tener serias consecuencias para las comunidades indígenas. Una de ellas es el programa de reasentamiento y consolidación aldeano, que es el programa que tiene el impacto más severo sobre los pueblos indígenas. Contrariamente a la declaración ministerial del 28 de abril de 1992, el reasentamiento todavía es una política. Esto fue reconfirmado en el 5º congreso del partido en 1996, aunque se declaró que no ocurriría ningún "reasentamiento forzado".

El programa de reasentamiento ha existido desde comienzos de los años 80 y fue originalmente iniciado por razones de seguridad (es decir, reubicar antiguos "aliados" de los EE.UU., fundamentalmente comunidades hmong). Desde el trazado del Plan de Acción Forestal Tropical (TFAP) de 1990, la conservación ambiental (forestal) es la razón oficial subyacente. Se sospecha que el TFAP hizo que el gobierno comprendiera que era más rentable para el Estado usar los bosques para la explotación maderera que para la agricultura rotativa. La consecuencia es que el reasentamiento tiene ahora en la mira a los agricultores rotativos.

El objetivo de reducir la agricultura rotativa está claramente establecido en la Ley Forestal de 1996. Por otro lado, la Ley Forestal prevé un manejo forestal descentralizado y, en cierto grado, reconoce derechos consuetudinarios (para uso doméstico a pequeña escala de recursos forestales, como la madera, la caza y la pesca). Se otorga autoridad a las aldeas para elaborar sus propias reglas y reglamentaciones para el manejo forestal, siempre y cuando cumplan con el objetivo general de conservar los bosques. Aunque las leyes consuetudinarias, los sistemas de tenencia de la tierra y las prácticas de manejo de recursos están explícitamente reconocidos (Acuerdo Ministerial sobre Derechos Consuetudinarios y Uso de Recursos Forestales, ver Chamberlain y Phomsombath, 1999), todavía están subordinados a la legislación nacional. Las actividades que se consideran contradictorias con la ley son actividades no-sustentables, las cuales incluyen, entre otras, algunas formas de agricultura swidden.

Se considera que un total de 300.000 familias son agricultores rotativos, lo cual constituye más del 40% de la población rural (Goudineau, Y., 1997: 15), y la mayor parte está integrada por pueblos indígenas. Desde que el gobierno planeó erradicar la agricultura rotativa para el año 2000, estos pueblos se convirtieron en el objetivo del reasentamiento. Pero a diferencia de otros lugares de Asia, el gobierno no es muy agresivo en la implementación de este programa. No obstante, muchas decenas de miles de personas ya han sido reasentadas. Algunos observadores han señalado que si el programa se lleva a cabo en su totalidad, será el mayor programa de reasentamiento del mundo. A la gente se la ayuda a subsistir sobre la base del cultivo de café, etc. En la mayoría de los casos el cultivo de arroz húmedo no es una opción porque queda muy poca tierra adicional adecuada para el cultivo de arroz húmedo ("paddy").

ORSTOM (Institut Français de Recherche Scientifique pour le Développement en Coopération) en nombre del PNUD y de la UNESCO realizó un estudio sobre "Reasentamiento y Características Sociales de las Nuevas Aldeas" (Goudineau, Y.,1997) que cubre 67 aldeas en seis provincias del norte y del sur de Laos. El informe muestra que en algunas aldeas, hasta el 30% de los habitantes murieron de malaria y otras enfermedades durante los primeros años.

Aunque el gobierno ahora reconoció que los programas de reasentamiento son sumamente problemáticos y aunque la política oficial es que no se realizarán más reasentamientos forzados, todavía cree honestamente (o trata de parecerlo) que el reasentamiento y la consolidación aldeana (es decir, agrupar pequeñas aldeas para formar un asentamiento mayor) son en última instancia positivos para la gente. El argumento dado es que sólo de esta manera puede suministrarse educación, salud y otros servicios gubernamentales. El gobierno también lo considera como una forma de "civilizar" a las minorías étnicas, una actitud también reflejada en partes de la Resolución de 1992.

Los observadores en Laos son de la opinión de que el gobierno se está alejando lentamente de la política de reasentamiento. Pero la situación sigue siendo no clara; el gobierno está vacilando sobre el tema. En el presente, el problema es que, aunque el gobierno central tiene una política más clara y cautelosa, las provincias la ignoran frecuentemente. La "incontrolabilidad" de las comunidades remotas y la escasez de población de las provincias del sur han sido mencionadas como posibles razones para la reubicación en marcha, como en la provincia Attapeu. Otra posible razón para el continuo reasentamiento en algunas provincias podría ser el interés de tener un acceso no obstaculizado para la explotación maderera.

Por otro lado, hasta ahora ninguna comuna ha sido reubicada debido al establecimiento de áreas protegidas. A ese respecto, el gobierno tiene un enfoque más "prohumano" que muchos otros países.

En suma, el reasentamiento de comunidades indígenas por "razones ambientales" es todavía una opción y una realidad en Laos. Sigue siendo el más problemático programa del gobierno con respecto a los derechos de los pueblos indígenas. Aunque hay buenas razones para creer que el gobierno se está alejando de esta política, se necesitará todavía ejercer más presión –desde adentro o a través de las ODAs y las organizaciones internacionales- para asegurar el abandono completo del programa, así como una adecuada implementación de una política de no-reasentamiento.

Derechos territoriales y el Programa de Adjudicación de Tierras y Bosques

La Ley de Tierras de 1997 provee el marco legal para la adjudicación de tierras bajo el programa de adjudicación de tierras y bosques. A los individuos y familias se les otorgan derechos permanentes de uso de la tierra (títulos) para tierras bajo uso permanente (es decir, arrozales húmedos o huertos) y certificados temporarios de tierras para la agricultura de altura (áreas boscosas), p. ej., para agricultura rotativa.

La actual adjudicación de tierra tiene lugar a nivel de distrito. La Oficina del Distrito de Agricultura y Forestería, bajo el Ministerio de Agricultura y Forestería, es responsable de su implementación. Como condición previa para obtener la adjudicación de tierra aldeana se tiene que trazar un plan de uso de la tierra y presentarlo a los gobiernos de distrito para su aprobación.

El punto de partida para la adjudicación de tierra son los derechos consuetudinarios existentes. Esto significa que estos derechos están claramente reconocidos por el gobierno. Desgraciadamente, hay varias debilidades y peligros potenciales en el programa de adjudicación de tierra tal como se lo practica actualmente.

El problema es que, primero, la gente no lo conoce y, segundo, faltan los medios financieros para implementar el programa. En muchas áreas no existe ningún límite aldeano oficial y, por lo tanto, en algunas áreas se están produciendo muchas invasiones de tierras de comunidades indígenas.

Sin embargo, el aspecto más problemático es que el programa de adjudicación de tierras también establece explícitamente la reducción de la agricultura rotativa como uno de sus principales objetivos. Se menciona como el segundo de los tres principales objetivos del programa, que son: 1. Manejo y uso sustentable de los recursos naturales; 2. Reducción y eliminación gradual de la agricultura rotativa; 3. Promoción de la producción comercial (OIT 2000: 96).

En realidad, la adjudicación de tierras es actualmente el principal instrumento del gobierno para reducir la agricultura rotativa. Esto se hace confinando el área de tierra adjudicada para la agricultura rotativa en las tierras altas. Aunque un área de tierra total de hasta 22 hectáreas (incluyendo tierra para frutales, pasturas, etc.) por cabeza es razonable, la tierra que puede usarse para la agricultura swidden es limitada y, por lo tanto, conduce a un acortamiento del ciclo swidden. A largo plazo, esta política puede tener resultados negativos cuando, después de solamente unos pocos ciclos, la gente (si no se le da alternativas viables) se verá forzada simplemente a buscar nuevas tierras para cultivar y trasladarse hacia la tierra forestal, ahora "protegida".

Por otro lado, el gobierno laosiano estableció claramente su compromiso con un enfoque descentralizado y participatorio del manejo de los recursos y la conservación de la biodiversidad. Varios decretos y órdenes ministeriales reconocen los derechos consuetudinarios sobre tierras y bosques y prevén un manejo comunitario, descentralizado, de los bosques. La tierra agrícola es adjudicada a familias (o inversores privados para hacer plantaciones comerciales de árboles) como parte del proceso de adjudicación de tierras y bosques, mientras que algunos bosques (tres tipos: bosques de captación de agua, reserva forestal aldeana y bosques utilitarios) son adjudicados para el manejo aldeano (ibid. 2000: 86f).

Pero el gobierno impone formas específicas de uso de la tierra determinadas a través de la división en zonas (en Áreas de Manejo de Recursos). Los derechos comunitarios sobre, p. ej., "bosques productivos" (bosques que no sean los antes mencionados) son muy limitados. Pueden ser abiertos para la explotación maderera y los derechos comunitarios son sólo reconocidos en la medida en que se haga un acuerdo con las respectivas comunidades que recibirán, a cambio, ayuda para el "desarrollo comunitario".

En suma: aunque los derechos individuales y comunitarios sobre tierras y bosques sí existen, se imponen restricciones sobre su uso y "se quita el control a los individuos y comunidades" (Chamberlain 1995: 41). Lo cual significa que el gobierno puede otorgar acceso a tierras comunitarias a compañías madereras, a plantaciones, etc.

Desarrollo hidroeléctrico

Con la apertura de Laos a las inversiones extranjeras a raíz de su Nueva Política Económica iniciada en los años 80, numerosos consultores extranjeros y corporaciones multinacionales acudieron a Laos a investigar el potencial de desarrollo de grandes proyectos de represas hidroeléctricas. Los ingenieros extranjeros han contemplado durante largo tiempo al sur de Laos, incluyendo la Cuenca del Sekong, como un área con considerable potencial para realizar proyectos de desarrollo hidroeléctrico a gran escala. Sin embargo, los primeros consultores extranjeros que realizaron investigaciones de campo detalladas respecto al potencial hidroeléctrico en el área desde la Guerra Americana de Vietnam, fueron de la agencia de ayuda bilateral del gobierno japonés, JICA. JICA ha realizado una serie de estudios sobre la energía hidroeléctrica en el Sekong, incluyendo el recién finalizado "Plan Maestro Hidroeléctrico de la Cuenca del Sekong", que plantea la construcción de 12 grandes represas en la Cuenca del Sekong, en Laos.

Sin embargo, todavía no había proyectos hidroeléctricos en construcción en 1993, cuando los gobiernos de Laos y Tailandia firmaron un acuerdo por el cual los laosianos acordaron vender a Tailandia, sedienta de energía, 1.500 MW de electricidad por año para el año 2000 (IRN, 1999).

Comunidades heuny y j'rou reasentadas

Desde entonces, comenzó la construcción de varias represas. Unas han sido completadas, algunas todavía están en construcción y hay varias otras planeadas. Debido a la construcción del embalse del Houay Ho en la Meseta de Bolaven, en el sur de Laos, diez aldeas en total, incluyendo nueve comunidades *heuny* (de un total de 20 comunidades del pueblos heuny) y una aldea *j'rou*, fueron reubicadas forzadamente en el lugar de reasentamiento de Ban Chat San. Hasta ahora han sido trasladadas 1.598 personas pertenecientes a 421 familias (*com. pers.*, funcionarios del gobierno laosiano, julio, 2000).

Es irónico que de las diez aldeas que han sido reasentadas, sólo una (Ban Nam Han), estaba situada dentro de las áreas del embalse para el Houay Ho y las planeadas represas de Xe Pian-Xe y Nam Noy. Por lo tanto, es incorrecto presumir que las comunidades tenían que ser reasentadas para dejar lugar a las represas. La razón dada para la reubicación de las otras comunidades fue la conservación de la zona de captación. Sin embargo, la Evaluación de Impacto Ambiental para las represas de Xe Pian-Xe

Mujer heuny en el reasentamiento de Ban Chat. Foto: archivo de IWGIA

Mujer heuny durante una visita a su aldea original, de la cual fueron reasentados a la fuerza. Foto: archivo de IWGIA

Nam Noy recomendó específicamente que las comunidades no deberían ser reasentadas en Ban Chat San. En cambio, se sugirió que, o bien podían ser dejadas en sus ubicaciones o movidas un poco más arriba de la montaña para evitar que fueran inundadas por los embalses (Electrowatt, 1996). Sin embargo, los encargados del proyecto y el gobierno no siguieron este consejo (por más información sobre la reubicación de las comunidades heuny, ver *Asuntos Indígenas* 4/2000).

La Meseta Nakai va a ser inundada

La Meseta Nakai y la montaña boscosa adyacente en Laos central han sido identificadas como uno de los puntos álgidos en Indochina. El área no es solamente un territorio con una desconcertante diversidad de vida vegetal y animal sino también el territorio de comunidades indígenas que hablan 28 lenguas diferentes. Tres de ellas son grupos cazadores-recolectores previamente desconocidos para el mundo exterior y que hablan lenguas que no están relacionadas con ninguno de los cinco grupos lingüísticos importantes que se encuentran en el área sino con la lengua vietnamita hablada del otro lado de la cadena Annamite.

Durante aproximadamente los últimos diez años, una compañía maderera administrada por el ejército laosiano ha estado talando en un área de 450 kilómetros cuadrados en la Meseta para abrir camino para el embalse de las dos represas propuestas de Nam Theun, de 1.069 megawatt.

Contrariamente a todas las expectativas, el Panel de Expertos financiado por el Banco Mundial, que fue contratado para brindar asesoramiento sobre la propuesta represa de US$ 1.000 millones, encontró a la actual situación "alentadora" y propuso que el proyecto debería ser realizado como estaba planificado y que el Banco Mundial debería seguir comprometido. De lo contrario, concluyeron, la pobreza rural aumentará en vez de disminuir, y la mundialmente reconocida biodiversidad del Área Nacional de Conservación de la Biodiversidad Nam Theun (NBCA) será degradada o completamente perdida. Se asume que el gran embalse representará una barrera que impedirá el fácil acceso y, por lo tanto, la continua degradación del NBCA. Para los miembros del Panel, como Thayer Scudder, un profesor de antropología del Instituto de Tecnología de California, conocido como "experto en reasentamiento", la explotación maderera y la inundación de 450 kilómetros cuadrados de tierra y la reubicación de 6.000 personas es aparentemente el precio que vale la pena pagar por la conservación de la NBCA Nakai-Nam Theun. Según Scudder, las 6.000 personas a ser reasentadas "son increíblemente pobres, para empezar". Él cree que van a ser trasladadas de todas maneras pero prefiere "tratar de mejorar el reasentamiento en vez de quedarse sentado y criticarlo".

Ya han surgido problemas con la represa propuesta. La compañía maderera administrada por el ejército, Bholisat Phattana Khed Phou Doi (BPKP-la Compañía de Desarrollo de la Región Montañosa), ya ha talado varias áreas fuera del área del embalse propuesto, incluyendo una propuesta área forestal comunitaria que se suponía iba a suministrar un ingreso a los aldeanos expulsados. Como ya se ha establecido una industria importante para procesar la madera, el Panel de Expertos teme que esta industria "pueda ejercer una fuerte presión política para que se le permita talar dentro de las áreas de conservación cuando sus fuentes existentes de madera se agoten y antes de que la plantación de árboles esté pronta para ser talada". Sin embargo, esto no disminuye el apoyo del Panel hacia el proyecto. BPKP ya ha trasladado familias fuera del área propuesta de embalse, independientemente de cualquier programa planificado de reasentamiento del Banco Mundial.

Sin embargo, sigue siendo incierto si la represa será construida, ya que el Consorcio Eléctrico Nam Theun 2 (NTEC) dice que depende de una "garantía de riesgo parcial" del Banco Mundial de US$ 100 millones para cubrir los préstamos comerciales. Sin tal garantía, los bancos comerciales no pondrán dinero en un proyecto financieramente riesgoso. NTEC tiene la esperanza de que el Banco Mundial estará de acuerdo en otorgar la garantía de préstamo en los próximos meses.

Fuentes

Chamberlain, James R., Charles Alton, Arthur G. Crisfield. 1995. *Indigenous Peoples Profile, Lao People's Democratic Republic.* Elaborado para el Banco Mundial. Care International, Vientiane.

Goudineau, Yves. 1997. *Resettlement and Social Characteristics of New Villages. Basic needs for resettlement communities in the Lao PDR.* An Orstom Survey. Vientiane: UNDP.

Khamin, Nok 2000. Más problemas para los heuny. *Asuntos Indígenas 4/2000.* Copenhague: IWGIA.

Lang, Chris 2001. Cutting the Trees to Save the Forest. *World Rainforest Movement Bulletin* Number 4, 2001. Montevideo.

ILO 2000. *Policy Study on Ethnic Minority Issues in Rural Development. Project to Promote ILO Policy on Indigenous and Tribal Peoples.* Ginebra: Organización Internacional del Trabajo.

BIRMANIA

¿Pasos hacia un diálogo político?

El 9 de enero de 2000, un portavoz de la ONU anunció después de la visita del enviado especial de las Naciones Unidas a Birmania, Razali Ismail, que el Tte. General Khin Nyunt y el líder de la Liga Nacional por la Democracia (NLD), Daw Aung San Suu Kyi, habían entrado en un diálogo "directo" desde el mes de octubre del mismo año. Al día siguiente, el NLD confirmó que estaban en conversaciones con el Consejo para la Paz y Desarrollo del Estado (SPDC) y se había logrado algún progreso. Antes de esto, el Tte. General Khin Nyunt se había reunido con el Presidente del NLD, U Aung Shwe, el 14 de septiembre.

Aunque las conversaciones han sido descritas por ciertos sectores como un "diálogo", es importante destacar que las actuales circunstancias no dan indicios de que estas conversaciones cumplan con las condiciones necesarias para un "diálogo" genuino.

Las conversaciones levantaron expectativas, pero se sabe muy poco sobre su naturaleza, extensión y contenido. Hay muchas razones para ser cautelosos sobre los resultados y el marco temporal para un cambio. Una serie de importantes actores han comentado que el cambio vendrá lentamente y el resultado no será una "democracia al estilo Occidental".

Queda todavía por verse si el SPDC está intentando manipular a la comunidad internacional para que retire las sanciones y reanude la ayuda y los préstamos o si está realmente dispuesto a comprometerse en una sincera discusión sobre el futuro bienestar de los pueblos de Birmania.

Aunque algunos exiliados han caracterizado a las conversaciones como "históricas", la posición del NLD parece ser de un optimismo cauteloso. El NLD se ha abstenido de hacer declaraciones públicas sobre el contenido o el progreso de las conversaciones, para crear, aparentemente, un clima de buena voluntad y evitar ofender al régimen. Sin embargo, se especula que la dirección del NLD tiene su propio cronograma para los resultados, posiblemente centrado en la liberación de prisioneros políticos, la capacidad de ejercer sus derechos como partido político legalmente registrado, el cese de las violaciones de derechos humanos contra las nacionalidades étnicas y la cooperación conjunta para proyectos de desarrollo.

A pesar del entusiasmo y la excitación, las conversaciones de ya 6 meses de duración no han brindado ningún resultado importante aparte de la liberación de un número limitado de prisioneros políticos, todos arrestados poco antes del proceso de diálogo. Miembros del Comité Ejecutivo Central del NLD (CEC) han recibido particular atención al ser liberados en dos ocaciones de arresto domiciliario y detención en "casas de huéspedes" del gobierno.

Por el momento, las conversaciones no son oficiales y muchos creen que sólo está representada la facción de Khin Nyunt. Ha habido una serie de rumores no confirmados de que el General Than Shwe y el General Maung Aye estuvieron presentes en algunas de las charlas en los estadios preliminares. Rumores más recientes sugieren una división entre las facciones, habiéndose Maung Awe opuesto al diálogo. Estos rumores aumentaron después de que el 19 de febrero de 2000 se estrelló un helicóptero y murió el 2º Secretario, Tte. General Tin Oo, quien estaba en la facción de Maung Aye, y muchos consideran su muerte como un asesinato por parte de la facción Khin Nyunt. Incluso hubo especulaciones sobre un golpe de estado y arrestos de altos mandos militares, incluyendo a Maung Aye. La veracidad de estos informes o su relación con las conversaciones son actualmente desconocidos. Sin embargo, Khin Nyunt ha negado públicamente los rumores de una división en el ejército. El tema no es solamente las divisiones en los altos mandos del ejército, sino un creciente descontento en las filas inferiores.

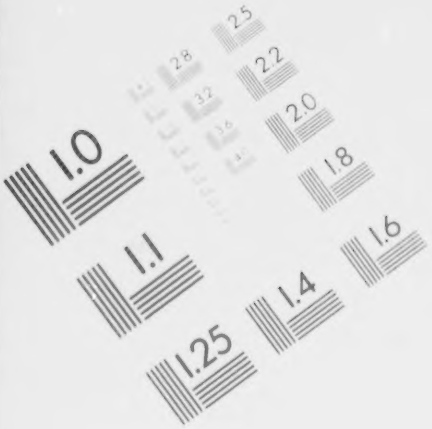
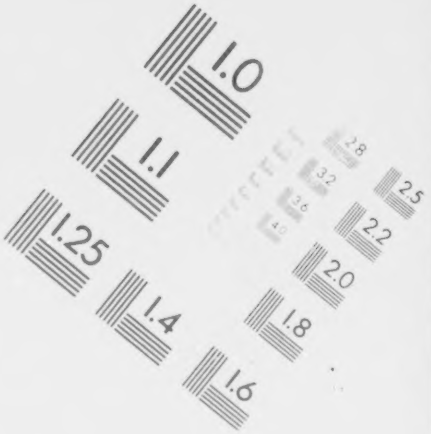
No está claro qué representantes del NLD han estado participando en el diálogo. Al menos hubo una reunión entre U Aung Shwe (entonces bajo arresto en una "casa de huéspedes") y el Tte. General Khin Nyunt. U Khin Maung Win, Ministro Adjunto de Relaciones Exteriores, acompañó a Khin Nyunt en la reunión del 14 de septiembre. Aung San Suu Kyi es uno de los protagonistas claves de las conversaciones, quizá junto con el presidente del NLD, U Aung Shwe y el Secretario del NLD, U Lwin. El arresto domiciliario impuesto por el SPDC a los líderes del NLD, con quienes se supone están en diálogo, ha levantado sospechas sobre las verdaderas intenciones del régimen. Aunque se ha permitido a los líderes del NLD mantener algunos contactos con diplomáticos visitantes, todavía no se permite un libre acceso a otros líderes democráticos y grupos de nacionalidad étnica.

La participación de representantes de pueblos indígenas no está confirmada

Hay escasa información sobre la posibilidad de que haya otros representantes participando en las conversaciones. Algunos comentarios de una serie de grupos de exiliados sugieren que en esta etapa no están participando "representantes" de grupos étnicos minoritarios [pueblos indígenas de Birmania]. La persona considerada iniciadora principal del "diálogo", el enviado especial de las Naciones Unidas a Birmania, Razali Ismail, se reunió con algunos "representantes", aprobados por el gobierno, de grupos étnicos minoritarios durante su visita a Birmania.

Existen rumores que algunos "representantes" han participado en discusiones con oficiales del SPDC fuera de Birmania, pero esto no ha sido confirmado. Phado Mahn Sha, el Secretario de la Unión Nacional Karen (KNU), dijo que hubo una reunión entre oficiales de enlace del KNU y del SPDC pero que en este momento no hay posibilidad de un diálogo. Un representante del Partido Progresista Nacional Karenni (KNPP) declaró que el SPDC les pidió en una carta unírseles y participar en actividades de desarrollo y en conversaciones. La no-inclusión de "representantes" de grupos de nacionalidad étnica será una fuente de continuos conflictos si el "diálogo" concreta algunas "resoluciones" entre el SPDC y el NLD.

Este informe proviene de ALTSEAN Burma Report Card Sept. 00-Ene. 01 "Birmania: Pasos Tentativos", al que agradecemos su atención.

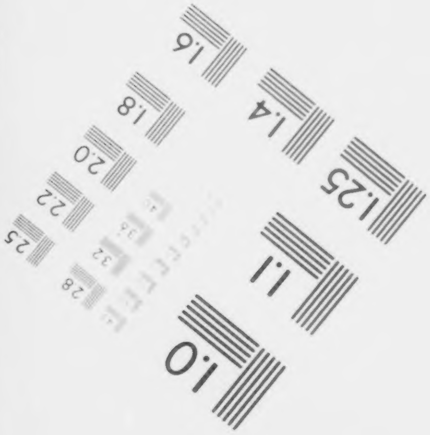
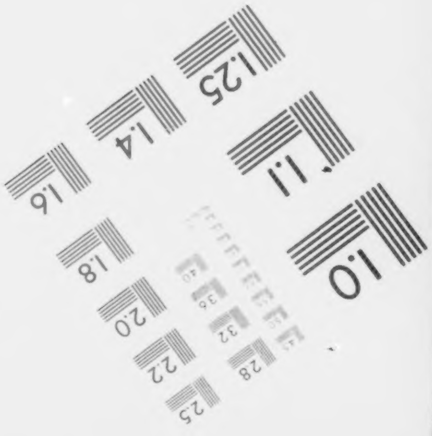
AIIM

Association for Information and Image Management

1100 Wayne Avenue, Suite 1100
Silver Spring, Maryland 20910
301/587-8202

Centimeter
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
mm
1
2
3
4
5
Inches

1.0
1.1
1.25
1.4
1.6
1.8
2.0
2.2
2.5
2.8
3.2
3.6
4.0

MANUFACTURED TO AIIM STANDARDS
BY APPLIED IMAGE, INC.

Continúan las operaciones militares: decenas de miles de indígenas son desplazados

Durante todo el año 2000, el ejército birmano continuó su represión del movimiento prodemocracia. Continuaron las operaciones de contrainsurgencia del gobierno, los trabajos forzosos, el reasentamiento forzoso, las ejecuciones extrajudiciales y otras graves violaciones de los derechos humanos contra varios grupos indígenas de oposición. La gente ha sido reasentada en gran escala, las casas fueron frecuentemente incendiadas, los cultivos destruidos y las pertenencias saqueadas. En los lugares de reasentamiento, los aldeanos tuvieron que contribuir hasta con 15 días al mes de trabajo forzado. Hasta ahora, se ha firmado alto el fuego con 13 de los 28 grupos indígenas de resistencia. La guerrilla *karen* ha sufrido grandes pérdidas durante estos últimos años.

Según el Informe Mundial de Derechos Humanos 2000, decenas de miles de indígenas de las áreas de conflicto del estado central Shan, el estado Karenni, el estado Karen, el estado Mon y la división oriental Tenasserim son mantenidos en sitios de reasentamiento forzoso. Sufrieron toques de queda, saqueos y restricciones de movimientos por parte del ejército birmano. Los refugiados *shan* que escaparon a Tailandia informaron que se implementaron toques de queda en lugares de reasentamientos birmanos, prohibiendo a los aldeanos shan salir de sus casas entre el anochecer y el amanecer y, en algunos casos, se les prohibió hablar y se les impuso una política de luces apagadas. Decenas de miles de otros aldeanos de Birmania oriental y sudoriental quedaron desplazados en los bosques o en áreas disputadas por el ejército y grupos insurgentes.

Más de 2.000 indígenas han sido desplazados por la persecución del ejército sólo en el distrito Kler Lwe Tu desde noviembre de 2000. Huyeron al este del distrito Mu Traw, en el estado Karen. Algunos de ellos continuaron y buscaron refugio del otro lado de la frontera con Tailandia. Las operaciones de "Tierra Quemada" del ejército birmano fueron dirigidas contra aquellos aldeanos que se escondían en la jungla con la intención de eliminar a todos aquellos que fueran encontrados en la zona libre declarada por los militares. Disparaban a cualquier persona a la vista y destruyeron todos los cultivos y alimentos almacenados que encontraron.

Fuentes

Human Rights Watch World Report 2000;
Internally Displaced peoples News. Issue 6, febrero, 2001
Institute of Peace and Conflict Studies: Armed Conflicts Report 2000
(www.ploughshares.ca/ CONTENT/ACR/ACR00/ACR00.html).

Transmigración masiva de indígenas wa al Estado Shan

En un intento de tomar el control de los centros de producción de narcótico a lo largo del la frontera birmano-tailandesa, el Ejército Unido del Estado Wa (UWSA), apoyado por los birmanos, movilizó a miles de soldados y civiles a áreas antes controladas por los shan. El SPDC informó el reasentamiento de decenas de miles de personas, en su mayoría indígenas *wa* cultivadores de amapola, en la frontera tailandesa en un "esfuerzo para la erradicación de la droga". Los funcionarios antinarcóticos tailandeses e internacionales creen que la junta militar está apoyando encubiertamente la producción de drogas de los grupos étnicos wa y *kokang*. Se dice que existen planes para reasentar 50.000 familias de la región wa del norte en la frontera birmano-tailandesa en el Estado Shan. A fines de diciembre se estimaba que entre 15.000 y 25.000 familias habían sido reasentadas. Se dice que además de los wa, ochocientas familias kokang, vecinos de los wa del norte del estado Shan, han sido reasentadas, en las proximidades de la frontera china en el sur.

Fuentes

ALTSEAN Burma Report Card Sept. 00-Jan. 01 "Burma: Tentative Steps"
Burma Alert, Vol 12:5
Human Rights Watch World Report 2000;

La OIT criticó la permanencia de la práctica del trabajo forzado

El SPDC no detuvo su uso de trabajos forzados para el desarrollo de la infraestructura, la construcción de estructuras budistas, el mantenimiento de campamentos militares y como portadores para las patrullas del ejército. Una delegación de la Organización Internacional del Trabajo (OIT) visitó Rangoon y otras áreas por invitación del SPDC de mayo 23 al 27 de 2000, poco antes de la conferencia anual de junio de la OIT. En su informe sobre la visita, la OIT hizo otra vez un llamado al SPDC para que dejara de usar el trabajo forzado, revocara o enmendara las provisiones legales para el trabajo forzado en las leyes de Aldeas y Pueblos, monitoreara el cumplimiento y penalizara a aquellos que emplearan fuerza de trabajo forzosa. El Ministro birmano de Trabajo, May. Gen. Tin Ngwe, escribió una carta fechada el día 27 de mayo al director general de la OIT, declarando que los dirigentes del SPDC "han tomado y están tomando todas las medidas necesarias para asegurar que no existan situaciones de trabajos forzados en Myanmar". Sin embargo, la conferencia de la OIT concluyó que el SPDC no puso fin a la práctica y le dio plazo hasta noviembre de 2000 para instituir reformas o, en su defecto, sufrir posibles sanciones. El 19 de octubre, una delegación de la OIT viajó a Rangoon para evaluar si el trabajo forzado todavía se practicaba.

Fuente

Human Rights Watch World Report 2000.
(www.ploughshares.ca/ CONTENT/ ACR/ ACR00/ ACR00.html)

NAGALIM

Iniciativa de la sociedad civil

En marzo de 2001, en una Convención de dos días de duración celebrada en Kohima, en el actual Estado de Nagaland de la India, grupos civiles de India, Kashmir y Nagalim hicieron un llamado por la restauración de los derechos humanos básicos en las áreas *naga*. Los delegados declararon que estaban "convencidos de que el deseo abrumador del pueblo naga es vivir en dignidad y libertad, lo cual se les ha negado por más de 53 años", y reiteraron el llamado por una solución pacífica negociada.

Durante la preparación de esta histórica Convención, los delegados visitaron profusamente áreas naga, reuniéndose con un grupo representativo del pueblo, incluyendo a militares indios y funcionarios civiles. Después de un cuidadoso estudio de la información recogida en el viaje, la Convención concluyó que todas las leyes draconianas deberían ser derogadas, incluyendo la Ley de Poderes Especiales de las Fuerzas Armadas, la Ley de Seguridad Nacional, la Reglamentación de Seguridad de Nagaland, 1962, y la Ley de Prevención de Actividades Ilícitas. Además, el gobierno de la India debería garantizar el retiro de todos los casos contra miembros del Movimiento Nacional Naga y cumplir sin más demoras su compromiso de mantener conversaciones incondicionales al más alto nivel. Expresando preocupación sobre la observancia parcial del alto el fuego, la Convención apeló al NSCM (IM) y al gobierno indio a respetar el alto el fuego al pie de la letra y conforme a su espíritu.

La Convención Kohima marca un punto decisivo en la iniciativa de la sociedad civil por una paz justa en el Sur de Asia. Establece firmemente la base para extender el papel de la sociedad civil en el proceso de paz. Los grupos civiles están ahora en el proceso de constitución de una "Comisión del Pueblo", integrada por personas eminentes de las áreas naga y de la India para analizar todas las violaciones de los derechos democráticos del pueblo naga e investigar cómo los escasos recursos destinados al Estado de Nagaland han sido malgastados por diversas agencias.

La “Ofensiva de Paz” de India

Las aldeas y pueblos naga están repletos de soldados indios que llevan "programas de desarrollo" en sus mochilas. La misión, cuyo nombre en código es "Operación Buen Samaritano", incluye de todo, desde la construcción de escuelas, iglesias, campos de deportes o de juego hasta cuidado de la salud y viajes educativos. Al provenir de un país con una pobreza crónica, corrupción y segregación de casta, esto suena profundamente revolucionario, excepto por una serie de hechos crueles:

a) Los proponentes son parte del Ejército de Ocupación que sigue suprimiendo los derechos humanos fundamentales de los habitantes locales;
b) El Ejército se está apoderando de las pocas funciones estatales que quedan en manos de la administración civil, lo cual es una clara violación de la Constitución de la India;
c) El gobierno ha demostrado poca preocupación por los millones de personas sin hogar que proliferan en las calles de las ciudades y plataformas de ferrocarriles de la India. "Al menos una tercera parte de la población de la India vive en la más abyecta de las pobrezas y millones duermen en las calles de las ciudades. Delhi recién anunció que adquirirá un submarino nuclear y desplegará misiles balísticos, lanzados desde el mar, para complementar sus fuerzas nucleares aéreas y de lanzamiento por misiles" (Eric Margolis, The Ottawa Sun, marzo 26, 2001).

Los dirigentes indios y los oficiales militares hablan orgullosamente de esta operación como de una "ofensiva de paz". Sin embargo, puede haber otras intenciones detrás de la iniciativa. Mediante la "Operación Buen Samaritano", el ejército puede actualmente interferir libremente en la vida de la gente, desorientarla y luego cooptarla y asimilarla. Las autoridades indias comprenden completamente el sentimiento naga de dignidad, autoestima y responsabilidad que está arraigado en su estilo de vida tradicional autosuficiente de base comunitaria. La "ofensiva de paz" parece ser un intento de mutilarlo.

La Operación Buen Samaritano va de la mano con el establecimiento de más bloqueos de caminos y puestos militares dentro de las aldeas. La gente que pasa por el puesto militar o los retenes de caminos es detenida, revisada y tiene que explicar las razones para pasar por ese lugar. El maltrato en los retenes y puestos militares hace que la gente se muestre reacia a moverse. De esta forma, los soldados alteran intencionalmente las actividades diarias del pueblo y el flujo de artículos esenciales entre las aldeas.

Las fuerzas de seguridad indias mataron unos 20 cuadros del ejército de resistencia naga durante los pasados doce meses. La mayoría de estos naga fueron muertos mientras viajaban desarmados.

En el ámbito político, los dirigentes indios continúan con sus tácticas de ambigüedad y autocontradicción. Al comienzo, los ancianos naga les otorgaban el beneficio de la duda. No obstante, ahora está quedando cada vez más claro que los dirigentes indios simplemente han estado tratando de ganar tiempo.

Después de todo esto, no debería ser difícil de entender que el Estado de la India tiene una visión muy borrosa de la iniciativa de la sociedad civil para fortalecer el proceso de paz, y una y otra vez ha intentado suprimirla. Las fuerzas de seguridad y los agentes secretos han aumentado el hostigamiento de miembros de la sociedad civil en el norte de la India. Esto incluye frecuentes controles por parte del ejército con el objetivo de restringir sus movimientos, disturbar constantemente las líneas de comunicación y llevar registros secretos de los activistas.

Esto fue confirmado el 24 de abril de 2001 por el Ministro de Estado para Asuntos Internos de la India, cuando comunicó al Parlamento que su Ministerio había puesto en la lista negra a seis ONGs del nordeste por tener vinculaciones con grupos militantes y que se mantenía una estrecha vigilancia sobre sus actividades (The Assam Tribune, 25 de abril, 2001). Varios miembros del Parlamento del Partido Militante Hindú, bajo el Ministro de Asuntos Internos, aprovecharon la ocasión para atacar aún más a las ONGs del nordeste, acusándolas incluso de canalizar fondos hacia los "insurgentes". Dos de las organizaciones civiles naga que lideran el movimiento por los derechos humanos, el Movimiento de los Pueblos Naga por los Derechos Humanos (NPMHR) y la Federación de Estudiantes Naga (NSF), encabezan la lista negra. Otras ONGs también enlistadas son: la Manad Adhikar Sangram Samiti (MASS), con base en Assam, el Comité Coordinador del Nordeste sobre Derechos Humanos, el Foro de los Pueblos Indígenas del Nordeste y la Unión de Todos los Estudiantes de Manipur (AMSU), con sede en Imphal.

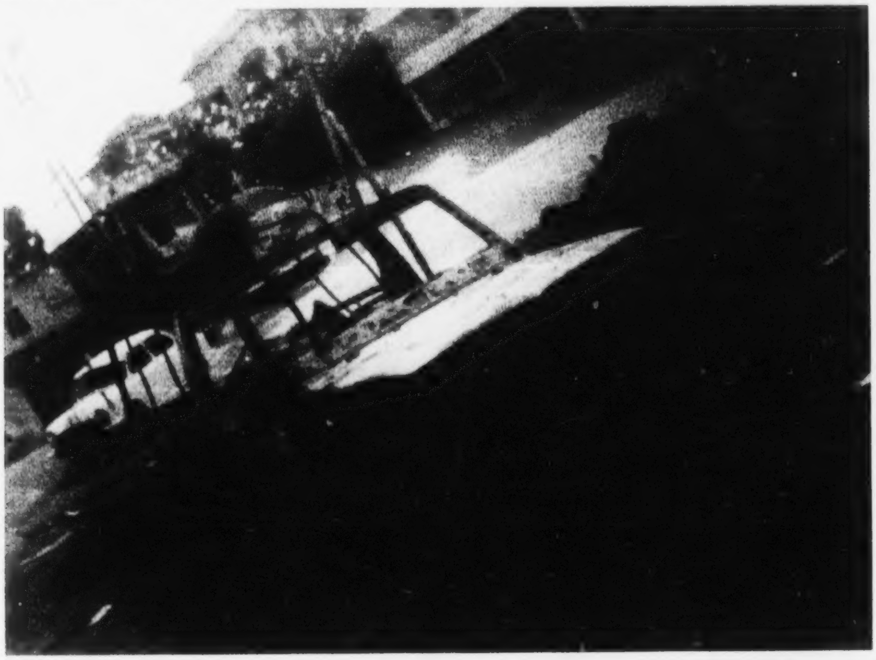
El Ministro admitió que estas ONGs no estaban directamente comprometidas en actividades de apoyo abierto o promoción de grupos militantes pero hizo énfasis en que se había observado que algunas de estas ONGs defendían la causa de la autodeterminación de los pueblos indígenas y organizaban acciones de protestas para condenar los supuestos hostigamientos y atrocidades cometidos contra militantes y el público en general por parte de las fuerzas de seguridad.

Dirigente naga Muivah excluído de la protección de la ACNUR

Uno de los servidores de más larga trayectoria del movimiento por la libertad, Th. Muivah, ha sido excluido de la protección de la ACNUR. La solicitud de protección de Th. Muivah fue rechazada por la ACNUR sobre la base de un "informe" de que había cometido "crímenes de guerra y serios

Campamento militar indio en el centro de Kohima, capital de "Estado de Nagaland". Foto: archivo de IWGIA

Secuelas de una operación a manos del ejército indio. Foto: archivo de IWGIA



crímenes no políticos" (la ACNUR no ha mencionado la fuente de este "informe", y mucho menos los detalles). Esto causó preocupación en los círculos de los derechos humanos del Sur de Asia. Se exhortó a la ACNUR a revisar su decisión. La NSCN (I-M), la principal organización de resistencia del pueblo naga, de la cual Th. Muivah es Secretario General, nunca ha sido acusada de crímenes terroristas por ninguna ONG reconocida. En una carta dirigida al Director del Buró de Asia-Pacífico de ACNUR en Ginebra, el Secretario General del Foro del Sur de Asia para los Derechos Humanos (SAFHR), el Sr. Tapan K. Bose, expresó que "la decisión de la ACNUR de 'excluir' al Sr. Muivah sobre la base de 'crímenes de guerra' fue tomada en base a insuficiente información y pruebas inadecuadas". Para asistir a la ACNUR, el Secretario General de SAFHR brindó la siguiente información en su carta: "El fallecido Jaiprakash Narayan, el respetado líder gandhiano de la India, condujo una Misión de Paz a Nagaland en los años sesenta. Está registrado que describió al movimiento naga como 'sin lugar a dudas una lucha por la libertad nacional'. El Tte. General F. A. Vyas del Ejército de la India, quien estaba a cargo de las operaciones de contrainsurgencia en Nagaland, dijo, 'los insurgentes naga nunca adoptaron tácticas de terror'. (1989, 'The search for Security', Dehra Dun, Natraj Publishers, p.126). El Sr. Murkot Ramuny, un experto indio en seguridad admitió en sus informes que, 'Los naga no matan civiles'. El ex Director General de Policía de Nagaland, Sr. Chaman Lal, en una entrevista con el periódico de Kohima, 'Naga Banner', el 26 de noviembre de 1994, comentó: 'En Punjab era terrorismo mientras que en Nagaland es insurgencia. Y tenemos que distinguir entre las dos. No estamos aquí para poner fin a la insurgencia. El problema de Nagaland es político y tiene que ser resuelto políticamente'. A mediados de los años noventa, el General Shankar Roy Chaudry, el entonces Comandante en Jefe del Ejército indio, exhortó al gobierno de la India a mantener un diálogo político con los naga".

La restricción legal de movimientos de Muivah (está en Tailandia bajo fianza) y la amenaza de su deportación a la India han entorpecido gravemente el proceso de paz de la región. Las conversaciones de paz entre India y Nagalim se han detenido desde el arresto y la detención de Muivah en Tailandia en enero de 2000.

PARTE III

DERECHOS INDIGENAS

NACIONES UNIDAS

INFORME SOBRE LA 6ª SESIÓN DEL GRUPO DE TRABAJO DE LA COMISIÓN DE DERECHOS HUMANOS RELATIVA A LA DECLARACIÓN SOBRE LOS DERECHOS DE LOS PUEBLOS INDÍGENAS

El 3 de marzo de 1995 la Comisión de Derechos Humanos ("**CHR**") decidió establecer un grupo de trabajo intersesional abierto con el propósito de elaborar un proyecto de Declaración *"considerando el proyecto contenido en el anexo de la resolución 1994/45 del 26 de agosto de 1994 de la Subcomisión sobre la Prevención de la Discriminación y Protección de las Minorías titulado 'Proyecto de declaración de la ONU sobre los derechos de los pueblos indígenas'"* (CHR resolución 1995/32). La 6ª sesión del Grupo de Trabajo del CHR ("**CHRWG**") fue celebrada en Ginebra del 20 de noviembre al 1 de diciembre del año 2000. Este informe intenta describir el debate de la 6ª sesión ("**CHRWG6**") para evaluar el movimiento de las posiciones de algunas delegaciones en particular y evaluar el progreso, sí es que lo hubo, en la construcción de consenso con relación a la Declaración.

Reuniones y asistencia

En su 6ª sesión, el CHRWG celebró 8 reuniones plenarias formales y 8 informales, y una reunión informal. A la sesión asistieron más de 300 personas, incluyendo representantes de 71 organizaciones indígenas y no-gubernamentales y de 43 gobiernos.

Los siguientes Estados miembros de las Naciones Unidas estuvieron representados en la sesión: Argentina, Australia, Bangladesh, Bielorrusa, Brasil, Canadá, Chile, China, Colombia, Costa Rica, Cuba, Dinamarca, Ecuador, Egipto, Estonia, Finlandia, Francia, Alemania, Guatemala, India, Indonesia, Japón, Latvia, Malasia, Mauricio, México, Marruecos, Nepal, Nueva Zelanda, Noruega, Paquistán, Panamá, Perú, Filipinas, Federación Rusa, Sudáfrica, España, Suecia, Togo, Ucrania, Reino Unido de Gran Bretaña e Irlanda del Norte, EE.UU. de América, Uruguay y Venezuela. Además también estaban representados la Santa Sede y Suiza que no son miembros de la ONU.

BEST COPY AVAILABLE

Reelección del Presidente-Informante del CHRWT

El Sr. Luis-Enrique Chávez, de la Misión Peruana en las Naciones Unidas en Ginebra, fue electo Presidente-Informante del CHRWT por segundo año consecutivo. En una declaración conjunta del 20 de noviembre al comienzo de la 6ª sesión, el Grupo Indígena propuso el nombramiento del Sr. Wilton Littlechild de la Organización Internacional para el Desarrollo de Recursos Indígenas como Copresidente indígena. El 23 de noviembre, el Presidente Chávez respondió a la propuesta, declarando que la copresidencia indígena sería solamente permitida en sesiones informales. El Presidente Chávez se refirió a un memorándum publicado por la Oficina de Asuntos Legales de la Sede Central de la ONU, en 1999, en respuesta a una solicitud de una opinión legal sobre sí las reglas de procedimiento permitían que el grupo de trabajo ad hoc de la CHR sobre un foro permanente para pueblos indígenas nombrara un representante de una organización indígena como copresidente. Ese memorándum estableció:

> *"Conforme a la regla 24 de las reglas de procedimiento de las comisiones funcionales del Consejo Económico y Social, las reglas de procedimiento de la Comisión se aplicarán a los procedimientos de sus organismos subsidiarios en la medida en que sean aplicables. En su parte pertinente, la regla 15 prevé que 'la Comisión elegirá, de entre los representantes de sus miembros, un Presidente, uno o más Vicepresidentes y otros funcionarios si así se lo requiere'.*
>
> *Como el Buró debe ser elegido entre los representantes de los miembros de la Comisión, la regla 15 excluye, por lo tanto, la posibilidad de nominar un representante de una organización indígena como presidente, vicepresidente o como cualquier otro funcionario. Además, debería notarse que la regla 15 prevé explícitamente un Presidente. Por lo tanto, las reglas de procedimiento excluyen la posibilidad de un copresidente". (E/CN 4/1999/83, par. 9)*

Informe

Como en los informes de sesiones previas del CHRWG, el informe de la 6ª sesión contiene un registro del debate general y del debate que tuvo lugar en las reuniones plenarias formales. El debate que tuvo lugar en las reuniones plenarias informales se refleja en los sumarios del Presidente-Informante. También como en los informes de sesiones previas, el párrafo 4 del informe de la 6ª sesión explica que las expresiones pueblos indígenas y poblaciones indígenas son usadas sin perjuicio de las posiciones de delegaciones particulares, las cuales siguen teniendo divergencia de opiniones. Como en el informe de la 5ª sesión, el párrafo 5 del informe de la 6ª sesión expresa:

> *"Los representantes indígenas hacen notar que todos los representantes indígenas y algunos Gobiernos podrían aceptar la expresión 'pueblos indígenas' tal como se usa en el texto actual del proyecto de declaración".*

Como en sesiones previas, el CHRWP fue suspendido durante dos reuniones para permitir la preparación del informe a ser adoptado en la reunión final. Hubo importantes problemas técnicos con la redacción del informe. Por ejemplo, México se quejó de que los párrafos 21 y 54 del proyecto de informe no reflejaban adecuadamente las declaraciones hechas en nombre de la delegación mexicana. Esto fue de particular interés en relación con la detallada declaración mexicana sobre el concepto central y sensible de la autodeterminación. Argentina, Bangladesh, China, Cuba y Paquistán expresaron sus preocupaciones de que intervenciones particulares sobre autodeterminación y/o procesos tampoco se podían ver en ningún lado o estaban reflejadas inadecuadamente e incompletamente en el proyecto de informe. Brasil comentó los muchos errores técnicos del Anexo 1, consistente de enmiendas propuestas por Gobiernos para futura discusión. El Presidente solicitó que las propuestas para mejorar el texto fueran presentadas al Secretariado en el plazo de 14 días. Para el 15 de abril 2001 no había ninguna evidencia de que tales mejoras hubieran sido reflejadas en el informe puesto en el sitio web de la Oficina del Alto Comisionado para los Derechos Humanos.

Durante la adopción del proyecto de informe, varios Estados realizaron intervenciones sobre procedimientos que dejaron claro cómo los mismos están generalmente dispuestos con respecto a la Declaración. Por ejemplo, varias propuestas de participantes indígenas para volver a escribir algunas palabras particulares para que reflejaran más precisamente el debate que realmente tuvo lugar, fueron rechazadas por el RU. Una de esas instancias relacionadas con el párrafo 5, dice:

> *"Los representantes indígenas hacen notar que todos los representantes indígenas y algunos Gobiernos podrían aceptar la expresión 'pueblos indígenas' tal como se usa en el texto actual del proyecto de declaración".*

Después que el R.U. se opuso a la propuesta de un representante indígena de reemplazar "algunos gobiernos" con "la mayoría de los Gobiernos", el Presidente acordó mantener la redacción de "algunos Gobiernos". Otra instancia está relacionada con el párrafo 103, el cual registra las percepciones indígenas de la discusión sobre el artículo 1. El R.U. se opuso otra vez a una propuesta indígena de introducir en este párrafo la siguiente redacción: "Ellos notaron además que la mayoría de los Estados expresaron que podían aceptar la redacción original del artículo 1". En esta ocasión, el Presidente comentó que tal redacción reflejaba la percepción de los participantes indígenas, así como también su propia percepción, que esa percepción no era injustificada y que era razonable que fuera reflejada en el informe. Después de oír una intervención de los EE.UU. contra la propuesta indígena y una intervención de Dinamarca en apoyo, el Presidente aceptó la propuesta danesa pues reflejaba más precisamente la naturaleza correcta del debate. Estados Unidos y Australia objetaron muchos puntos técnicos durante la adopción del informe.

Organización del trabajo

En la primera reunión de la 6ª sesión, el Presidente-Informante dio un breve resumen de sus consultas sobre la organización del trabajo. Se propuso realizar un debate general sobre los diferentes aspectos del proceso en que el CHRWG está involucrado, seguido por un debate general sobre aspectos substantivos de la Declaración, como la autodeterminación, derechos territoriales y recursos naturales. Se propuso entonces concentrarse en los artículos 1, 2, 12, 13, 14, 44 y 45.

Métodos de trabajo

La 6ª sesión fue testigo de la continuación de la práctica, comenzada en la 5ª sesión, de realizar reuniones regulares entre los Estados en un intento de disminuir sus diferencias con respecto al texto. Esta práctica fue otra vez objeto de agudas críticas de los participantes indígenas. En una declaración conjunta realizada el 20 de noviembre de 2000, el Grupo Indígena declaró:

> *"Las reuniones cerradas que han tenido como resultado que los gobiernos presenten textos alternativos violan los principios establecidos en la resolución 1995/32 de la Comisión de Derechos Humanos, que establece la plena e igual participación de los Pueblos Indígenas".*

Consecuentemente, el Grupo Indígena propuso la revisión del programa provisorio para adjudicar tiempo para la discusión del proceso, en particular la plena e igual participación de los pueblos indígenas. A pesar de un prolongado debate sobre el proceso, resumido más abajo, los participantes indígenas no lograron impedir la institucionalización de las reuniones intergubernamentales y las propuestas de textos alternativos. El resultado es evidente en el Anexo 1 del informe de la sesión (UN Doc. E/CN 4/WG 15/CRP 4), titulado "Enmiendas propuestas por Gobiernos para Futura Discusión". El Anexo 1 reproduce propuestas con relación a los artículos 1, 2, 12, 14, 44 y 45, presentadas en la 6ª sesión, así como también propuestas relativas a los artículos 15, 16, 17 y 18, presentadas en 1999 en la 5ª sesión.

Al mismo tiempo, es evidente que los Estados participan en las reuniones intergubernamentales con diversos grados de entusiasmo y consiguientemente, se identifican con los resultados en diversos grados. Por ejemplo, cada uno de los documentos de trabajo sobre los artículos 1, 2, 12, 14, 44 and 45 contiene el comentario *"Algunos estados pueden aceptar el artículo tal como estaba redactado originalmente"*. En el transcurso de la discusión plenaria informal, numerosas delegaciones Estatales declararon que podrían aceptar un artículo en particular tal como estaba redactado, pero en interés de llegar a un consenso estaban dispuestos a considerar propuestas para alterar el texto.

Durante toda la 6ª sesión hubo problemas porque los documentos de discusión no estaban prontos de manera que hubiera tiempo suficiente para permitir a los participantes considerar su contenido, frecuentemente detallado y complejo, para hacer consultas con relación a los mismos y para preparar declaraciones en respuesta. Por ejemplo, se perdió mucho tiempo valioso de reunión porque el Presidente se negó a abrir el debate sobre el artículo 2 pues no había ningún documento de discusión presentado al CHRWG. Los representantes indígenas no veían ninguna razón para que no pudiera realizarse un debate sobre el artículo 2 tal como estaba redactado. Sin embargo, el Presidente suspendió la reunión, declarando que el debate sería prematuro en ausencia de propuestas concretas.

Como los trabajos de discusión estaban redactados en inglés, surgieron problemas particulares, ya que no eran traducidos inmediatamente al español, francés, ruso y otras lenguas habladas por los participantes. Todos los documentos de discusión aparecieron primero en inglés y recién después en español y francés. La discusión del artículo 14 fue alterada porque el documento de discusión sólo estaba disponible en inglés. De manera similar, el documento de discusión sobre el artículo 13 fue hecho sólo en inglés. Estas dificultades no sólo enfatizaron que el proceso de nueva redacción está principalmente impulsado por el bloque anglófono CANZUS, sino que también puso a los participantes no-anglófonos en una desventaja considerable. Las dificultades enfrentadas por las delegaciones indígenas no-anglófonas para realizar un análisis considerado de las propuestas eran manifiestas.

Debate general

Proceso: intervenciones de las delegaciones Estatales

El debate general en el CHRWG comenzó con intervenciones procesales. En este debate general, Suiza declaró que los participantes deberían evitar textos sin ningún contenido y que el texto final no debía representar ningún debilitamiento del texto actual. También era importante evitar un debate estéril sobre la supuesta necesidad de una definición del término pueblos indígenas. Nueva Zelanda se refirió a la importancia de un diálogo genuino y abierto y de deliberaciones inclusivas. Al mismo tiempo, Nueva Zelanda reconoció la importancia de que los pueblos indígenas y los Estados se reunieran separadamente en sesiones informales, y que todos los participantes continuaran negociando de buena fe. La Federación Rusa destacó que el texto actual era inaceptable virtualmente para todas las delegaciones Estatales y que los Estados no podían trabajar para llegar a un acuerdo sobre el texto en sesiones plenarias informales. Había llegado el momento de comenzar a redactar un texto, comenzando con los artículos fáciles y avanzar hacia los conceptos más difíciles.

Canadá expresó preocupación por el hecho de que habiendo llegado a la mitad del Decenio Internacional para los Pueblos Indígenas del Mundo, se había progresado muy poco en el CHRWG. El propósito de las reuniones cerradas era acercar las posiciones gubernamentales para que los representantes indígenas no se vieran enfrentados a una amplia variedad de propuestas. Según Canadá, había llegado el momento de pedir a los pueblos indígenas que examinaran textos alternativos para ver si se podía llegar a un acuerdo. Cuba hizo notar que nunca había asistido previamente a una reunión en la cual hubiera tantas reuniones separadas de gobiernos y ONGs. Cuba no deseaba una Declaración que reflejara el *status quo*, y exhortó a una mayor flexibilidad en las negociaciones. Australia se refirió a los "cambios significativos" necesarios para poder lograr un documento que pudiera avanzar.

Noruega mantuvo la creencia de que la adopción de la Declaración por consenso todavía era posible. Es muy probable que no fuera tal cual estaba actualmente redactada, aunque sería posible llegar a un acuerdo con relación a la estructura y sobre la mayoría de los artículos tal como estaban actualmente redactados o con enmiendas menores. México se refirió al diálogo como la condición *sine qua non* del éxito, notando que se había llegado a un punto crítico en el proceso, en el cual muchos Estados estaban preocupados de que no se producía un diálogo y que habían surgido grupos separados. Según México, las negociaciones con relación al Foro Permanente demostraron que era posible lograr un progreso cuando las negociaciones se conducen de buena fe y con transparencia. Guatemala declaró que muchas delegaciones Estatales consideraban que el texto era un buen texto, el cual podían subscribir sin ningún cambio. Dinamarca propuso que los representantes indígenas fueran invitados a estar presentes durante las reuniones intergubernamentales.

Proceso: intervenciones de las delegaciones indígenas

En sus contribuciones al debate general sobre el proceso, numerosos representantes indígenas hicieron comentarios sobre la falta de transparencia resultante de las reuniones separadas de los Estados. A los participantes indígenas se les presentaban redacciones sin ninguna información sobre sus orígenes o sin ninguna información sobre el apoyo para las propuestas particulares. Como resultado, eran incapaces de identificar cuáles Estados tenían problemas particulares con el texto y no había oportunidad de entrar en diálogo directo con los mismos. Numerosos representantes subrayaron que ninguna de esas reuniones debería realizarse a puertas cerradas ni durante el tiempo autorizado de reunión. El trabajo a puertas cerradas no conducía al diálogo y alejaba a los participantes aun más de la comprensión y consenso necesarios si es que la Declaración va a ser proclamada por la Asamblea General y va a constituir una diferencia en la vida de los pueblos indígenas.

Muchos representantes subrayaron la necesidad de una plena e igual participación de los pueblos indígenas en todos los aspectos del trabajo del CHRWG, incluyendo la elaboración del plan de trabajo, durante las sesiones, en la toma de decisiones, en el derecho al voto, en la preparación del informe y en todas las reuniones intergubernamentales. Los representantes indígenas habían enfatizado consecuentemente la importancia de métodos de trabajo flexibles, francos y consensuales. Por esto, habían observado con desencanto el desarrollo de métodos antagónicos de trabajo y la polarización de las delegaciones indígenas y Estatales en bloques separados y opuestos.

Varias delegaciones indígenas, incluyendo la del Consejo Saami, subrayaron la necesidad de encarar el consenso de acuerdo con la práctica estándar de la ONU. Se hizo referencia a la resolución 1835 (LVI) de ECOSOC del 14 de mayo de 1974, que define el consenso como un acuerdo general sin votación, sin implicar necesariamente el acuerdo de todos. Se hizo también referencia a la Opinión Legal de la ONU de 1976 que define el consenso como todo esfuerzo para alcanzar un acuerdo unánime, no impidiendo que aquellos que disienten dejen registrado su desacuerdo (UN Doc. ST/LEG/12 1976). Se dijo que si se aplicara en el CHRWG la práctica normal de la ONU con relación al consentimiento, numerosos artículos ya habrían sido adoptados por consenso. Varias delegaciones sugirieron que el punto muerto con relación al consenso puede ser superado si el Presidente solicitara a los Estados que están en desacuerdo con la tendencia general que anoten sus reservas, pero no bloqueen el consenso necesario para avanzar con respecto a la adopción de previsiones particulares de la Declaración.

Varios participantes indígenas comentaron sobre la omisión de los Estados en responder a los argumentos de los representantes indígenas en defensa de la Declaración en términos de la teoría y el derecho internacional, y con respecto a su coherencia con normas articuladas en otros instrumentos. Las delegaciones Estatales han ignorado en gran medida este análisis de las normas y prácticas internacionales. Varios oradores indígenas comentaron sobre la decepcionante omisión de los Estados en reconocer el trabajo de los organismos independientes de la ONU sobre los tratados de derechos humanos, los cuales aportan una importante línea de defensa de los esfuerzos para promover el apoyo de la Declaración.

Un representante de los pueblos indígenas africanos lamentó la ausencia de gobiernos africanos en la reunión. Las delegaciones de Australia habían *"registrado con gran preocupación la declaración del Gobierno australiano concerniente a los 'cambios significativos' necesarios para lograr un documento que* *pueda avanzar. Tales declaraciones justifican seguramente los temores reales de los participantes Indígenas con relación a las intenciones de los Estados de desmembrar completamente el texto existente"*.

Numerosas delegaciones, incluyendo la Conferencia Circumpolar Inuit ("**ICC**"), el Consejo Saami, el Centro Indio de Recursos Legislativos, la Comisión de Aborígenes e Isleños del Estrecho Torres ("**ATSIC**"), el Secretariado Nacional de Organizaciones de Isleños del Estrecho Torres, el Secretariado Nacional Aborigen e Isleño de Servicios Legales, la Corporación Aborigen de la Mujer Indígena y la Fundación Aborigen e Isleña para la Acción Investigativa, reiteraron su disposición a considerar cambios que fortalezcan al texto y que sean coherentes con los principios de igualdad y no-discriminación, sujeto al reconocimiento incondicional del derecho de autodeterminación y derechos colectivos y el uso del término pueblos indígenas en la Declaración. El representante de ATSIC destacó que como esos criterios fueron propuestos primero, los cambios habían sido presentados sin ninguna justificación, lo cual había oscurecido la claridad del texto existente y lo había debilitado. También se mencionó la retrógrada práctica de algunas pocas delegaciones Estatales de poner el término pueblos indígenas entre paréntesis.

Autodeterminación, derechos territoriales, recursos naturales: intervenciones de las delegaciones indígenas

En sus intervenciones en el debate general sobre autodeterminación, los representantes indígenas volvieron a afirmar el derecho a la autodeterminación tal como está formulado en el artículo 3, como la previsión fundamental de la Declaración. Numerosos representantes indígenas expresaron preocupación sobre las iniciativas para elaborar una redacción alternativa del artículo 3. Se expresó que el CHRWG no tenía mandato para disminuir las normas internacionales aplicadas a los pueblos indígenas. Se dijo que el derecho de autodeterminación estaba firmemente establecido en el derecho internacional, incluyendo la Carta de las Naciones Unidas, el artículo 1 del Convenio Internacional sobre Derechos Civiles y Políticos ("**ICCPR**") y el Convenio Internacional sobre Derechos Económicos, Sociales y Culturales ("**ICESCR**") y la Declaración y el Programa de Acción de Viena, adoptados por la Conferencia Mundial sobre Derechos Humanos de 1993 ("**la Declaración de Viena**"), habiendo también obtenido el estatus de *ius cogens*, o una norma absoluta del derecho internacional cuya derogación no es permitida. El representante de la Organización Internacional para el Desarrollo de Recursos Indígenas declaró que negociar un texto alternativo para el artículo 3, sin consideración de las opiniones de los pueblos indígenas, era contrario a la Recomendación General XXIII (51) del Comité sobre la Eliminación de la Discriminación Racial, adoptada el 18 de agosto de 1997, que establece que *"ninguna decisión relativa directamente a los … derechos e intereses [de los pueblos indígenas]será tomada sin su informado consentimiento"*.

Los oradores indígenas describieron de diversas formas la autodeterminación como una forma de fortalecer la capacidad de los pueblos indígenas para trazar sus destinos económicos, sociales, culturales y políticos, para disminuir los conflictos entre los pueblos indígenas y los Estados, para promover una coexistencia pacífica y para permitir a los pueblos indígenas alcanzar un desarrollo sustentable. Un representante indígena de las Filipinas destacó que en última instancia, el reconocimiento de la autodeterminación fortalecería a la ONU como organismo mundial dedicado a defender los derechos de los más débiles y más vulnerables.

Varios oradores indígenas exhortaron a los Estados a que, en la continuación del diálogo sobre la autodeterminación, tuvieran en consideración la jurisprudencia de los tratados de derechos humanos de la ONU. No sólo es una práctica aceptada en los tratados usar el término "pueblos indígenas". También es una práctica general en el Comité de Derechos Humanos y en el Comité sobre Derechos Económicos, Sociales y Culturales, los organismos responsables de supervisar la implementación de los dos Convenios, de investigar con respecto al artículo 1 en cuanto al derecho de los pueblos indígenas a la autodeterminación. Se hizo particular referencia a las observaciones concluyentes del Comité de Derechos Humanos sobre Canadá (UN Doc. CCPR/C/79/Add 105/1999, par. 7) y Noruega (UN Doc. CCPR/C/79/Add 112/1999, par. 17). A este respecto, el representante del Consejo Saami destacó que Finlandia, Noruega y la Federación Rusa, al referirse a la autodeterminación interna, buscaban imponer una limitación no impuesta por el Comité de Derechos Humanos.

Varios representantes indígenas comentaron que las preocupaciones de los Estados con relación a la integridad territorial están consideradas por el artículo 45 de la Declaración, que establece *"Nada de esta Declaración puede ser interpretado como que implica para cualquier Estado, grupo o persona algún derecho a comprometerse en cualquier actividad o realizar cualquier acto contrario a la Carta de las Naciones Unidas"*. Otros representantes indígenas sugirieron que las preocupaciones de los Estados con relación a la integridad territorial también estaban protegidas por la *Declaración de Relaciones Amistosas* (resolución 2625) de 1970 de la Asamblea General. La *Declaración de Relaciones Amistosas* aclaró la relación entre el principio de autodeterminación y los de integridad territorial y unidad nacional, estableciendo que el derecho a la autodeterminación, como está articulado en la Carta de la ONU, no implicaba normalmente el derecho de secesión de Estados independientes. La *Declaración de Relaciones Amistosas* sugirió un criterio de "efectivamente representativo" para determinar cuando los pueblos indígenas ya no están obligados a ejercer su derecho a la autodeterminación al procurar llegar a un acuerdo para compartir el poder con Estados existentes. Este enfoque promovió la negociación de acuerdos. El representante de Na Koa Ikaika O Ka Lahui Hawaii hizo notar que, como se expresaba en la *Declaración de Relaciones Amistosas* y la *Declaración de Viena*, el principio de integridad territorial impone un requisito de legitimidad a los Estados.

Varios oradores indígenas comentaron que el derecho internacional no impone ninguna forma especial de ejercicio de la autodeterminación. Otros comentaron que en el ejercicio de la autodeterminación, pocos pueblos indígenas, si es que alguno, buscan desmembrar Estados existentes. En cambio, la mayoría asume un enfoque funcional, expresando una preferencia por el reconocimiento y la reforma constitucional dentro de los Estados para poder desarrollar instituciones políticas indígenas y determinar su desarrollo de acuerdo a sus propios valores. Aquellas organizaciones indígenas como la ICC y el Consejo Saami que expresaron una voluntad de entrar en un diálogo sobre cambios que fortalezcan o aclaren el texto existente establecieron claramente que no puede haber ninguna limitación a la autodeterminación y que sería inaceptable y discriminatorio restringir la autodeterminación de los pueblos indígenas a la autodeterminación interna. Aunque la vasta mayoría de los pueblos indígenas optaría por implementar su derecho a la autodeterminación mediante acuerdos de autonomía y autogobierno, el derecho no puede ser limitado *a priori* a tales acuerdos.

Numerosos oradores indígenas se opusieron vigorosamente a los intentos de algunos Estados de introducir una distinción entre autodeterminación interna y externa. Por ejemplo, el representante de ATSIC expresó que:

> *"[L]a distinción sugerida por algunos Estados entre autodeterminación interna y externa es* ***ahistórica*** *y* ***artificial****. Es* ***ahistórica*** *porque ignora la naturaleza inherente de nuestro derecho a la autodeterminación. La ecuación de autodeterminación externa con secesión es* ***artificial*** *porque limita el derecho y elimina opciones. El derecho a la autodeterminación requiere que los Estados reconozcan nuestros derechos humanos internamente. También requiere el reconocimiento de nuestros derechos humanos en el ámbito internacional. Nuestra participación en los foros de la ONU es una expresión externa de autodeterminación que no implica secesión o independencia. También puede haber otras".*

El representante de ATSIC también se refirió a la propuesta del Presidente en la 5ª sesión, en 1999, de que el futuro debate sobre autodeterminación estuviera basado en tres premisas, incluyendo que *"los Convenios Internacionales universalmente aceptados, que contienen el derecho a la autodeterminación"* sean tomados como base para una futura discusión. El representante comentó que al reafirmar su incapacidad de aceptar la inclusión del término autodeterminación en la Declaración, Australia había optado aparentemente por ignorar la solicitud del Presidente.

Representantes de los pueblos indígenas de África y, por primera vez, de las Islas Salomón, hicieron intervenciones significativas. Se declaró que en África, los Estados democráticos están en un estado naciente de desarrollo y que deben ser incluidos los derechos de los pueblos indígenas. El Sr. Ian Aujare describió la autodeterminación como un tema fundamental en las Islas Salomón, refiriéndose a la actual inquietud social heredada de la colonización y a los muchos problemas no encarados por el proceso de descolonización.

Los oradores indígenas dedicaron mucho menos debate a las previsiones de la Declaración concernientes a tierras y recursos. Los oradores indígenas exhortaron otra vez a los Estados a tener en cuenta la evolución de la jurisprudencia del Comité de Derechos Humanos y del Comité sobre la Eliminación de la Discriminación Racial. Muchas intervenciones hicieron referencia a la Recomendación General del Comité CERD sobre los Derechos de los Pueblos Indígenas, que llama a los Estados a:

> *"reconocer y proteger los derechos de los pueblos indígenas a poseer, desarrollar, controlar y usar sus tierras, territorios y recursos comunales y, cuando hayan sido privados de sus tierras y territorios tradicionalmente usados o habitados de otra forma o usados, sin su libre e informado consentimiento, tomar medidas para devolver estas tierras y territorios. Sólo cuando esto no sea posible por razones de hecho, el derecho a la restitución deberá ser substituido por el derecho a una justa, equitativa y pronta compensación. Tal compensación deberá, en la medida de lo posible, tomar la forma de tierras y territorios".*

Varios representantes indígenas exhortaron a los Estados a no limitarse por constituciones, legislación o políticas internas con relación a los derechos a la tierra y a los recursos. Se dijo que tal enfoque estaría en conflicto fundamental con el propósito de la normativa internacional sobre derechos humanos. El representante de la Organización de Pueblos Indígenas y Minoritarios Africanos destacó que los *batwa* del Área de los Grandes Lagos han sido privados del goce de los recursos naturales que constituyen la base de su supervivencia. Los batwa siguen siendo desposeídos a través de iniciativas desarrollistas, incluyendo proyectos de reasentamiento, la creación de parques nacionales y la adjudicación de tierra a productores privados. Un representante indígena de las Filipinas declaró que los pueblos indígenas están perdiendo el control de sus tierras y recursos en todo el mundo.

Autodeterminación, derechos territoriales, recursos naturales: intervenciones de las delegaciones de los Estados

En el debate general sobre la autodeterminación, Noruega se refirió al estado crítico en que han llegado las negociaciones en el CHRWG y la necesidad de alcanzar un consenso sobre principios centrales de la Declaración. Noruega seguía convencida de que el éxito de los esfuerzos del CHRWG dependerá de su habilidad para considerar otra vez la autodeterminación. Según Noruega, la autodeterminación ejercida dentro de los Estados incluía el derecho de los pueblos indígenas a participar en todos los niveles de tomas de decisión en asuntos legislativos y administrativos y en el mantenimiento y desarrollo de sus sistemas políticos y económicos. La Declaración contenía varias previsiones relativas a la implementación de la autodeterminación, incluyendo el derecho de los pueblos indígenas a mantener y desarrollar sus propios sistemas económicos y sociales, controlar sus propios asuntos y desarrollar y utilizar sus propias instituciones si así lo deciden. Era crucial encontrar formas para que los pueblos indígenas puedan vivir dentro de Estados existentes mediante arreglos para compartir el poder. Con relación a la tierra y los recursos, el Gobierno noruego estaba actualmente preparando una legislación concerniente al uso, manejo y propiedad de la tierra en Finnmark. Se estaba formando un Comité para considerar los derechos *saami* en otras partes de Noruega.

Finlandia expresó su apoyo al término pueblos indígenas porque da sentido al gran número de derechos colectivos contenidos en la Declaración. Cuando se procura preservar las identidades de los pueblos indígenas, algunas características de los derechos colectivos son esenciales. Finlandia apoyó la autodeterminación en la Declaración con la condición de que el artículo 31 relativo al autogobierno quedara formulado de la forma propuesta, es decir, refiriéndose a los asuntos internos y locales. La autodeterminación contenía dos dimensiones, una interna y otra externa. Finlandia consideraba que las previsiones de la Declaración sobre tierra y recursos requieren revisión. Deberían ser flexibles para posibilitar una serie de soluciones nacionales equitativas y justas.

Canadá comentó que el tema planteado por la Declaración era sí el derecho de autodeterminación se aplicaba los pueblos indígenas que viven dentro de Estados existentes y, si es así, en qué consistía este derecho. Como lo estableció en sesiones previas, Canadá aceptaba un derecho a la autodeterminación para los pueblos indígenas que respetara la integridad política, constitucional y territorial de los Estados democráticos. El ejercicio del derecho implicaba negociaciones entre los Estados y los diversos pueblos indígenas dentro de esos Estados para determinar el estatus político de los pueblos pertinentes y los medios de procurar su desarrollo económico, social y cultural. Canadá podía aceptar muchos de los principios contenidos en las previsiones sobre tierra y recursos de la Declaración. En particular, Canadá reconocía el derecho de los pueblos indígenas a poseer, controlar, desarrollar y usar sus recursos, así como también el derecho a determinar y desarrollar sus prioridades y la importancia de un proceso adecuado. Sin embargo, las previsiones tenían que ser lo suficientemente flexibles como para tomar en cuenta las muchas situaciones nacionales diferentes para asegurar su aplicación universal. Por ejemplo, según Canadá, el actual texto no trataba la situación de los pueblos indígenas que han abandonado sus tierras tradicionales y ya no viven en sus comunidades tradicionales.

Australia siguió siendo incapaz de aceptar el término autodeterminación ya que implica, para muchos pueblos, el establecimiento de Estados independientes. Con relación a los derechos a la tierra y a los recursos, Australia aceptaba que la relación de los pueblos indígenas con sus tierras tradicionales es especial e importante, pero no podía aceptar las previsiones de la Declaración en su forma actual. Venezuela declaró que la nueva Constitución de Venezuela reconocía la existencia de pueblos indígenas a través de sus representantes en la asamblea nacional. En Venezuela, se reconocían los derechos originales de propiedad colectiva de tierras ancestrales. Dinamarca confirmó el apoyo de Dinamarca y del Gobierno Autónomo de Groenlandia al derecho de autodeterminación para los pueblos indígenas y a la inclusión de tal derecho en la Declaración. Durante las dos o tres décadas pasadas, habían evolucionado nuevas formas de relaciones entre los pueblos indígenas y los estados. El establecimiento del CHRWG y de un Foro Permanente eran ejemplos de tal evolución. Aunque Dinamarca podía aceptar el artículo 3 en su redacción actual, una forma de resolver las preocupaciones de algunos Estados sería mantener la redacción del artículo 3 pero extenderla al artículo 45 como lo proponía Finlandia.

Guatemala consideraba innecesario redefinir o restringir el derecho a la autodeterminación. Durante el período de descolonización, el derecho a la autodeterminación tuvo como resultado el nacimiento de naciones. Hoy, ejercido dentro de los Estados, la autodeterminación posibilitaba a los pueblos y grupos nacionales definir su situación política mediante procesos de descentralización y autonomía, y procurar su desarrollo económico, social y cultural. Era una contradicción creer, por un lado, en un sistema democrático pluralista y participatorio y, al mismo tiempo, negar o restringir el derecho a la autodeterminación. Francia confirmó su reconocimiento del derecho de los pueblos indígenas a la autodeterminación siempre y cuando no sea en detrimento de otras poblaciones de los territorios concernientes. El principio debería ser aplicado mediante negociación y diálogo, y ser adaptado a las circunstancias de cada caso. Francia destacó que el derecho a la autodeterminación también contiene un aspecto territorial relacionado con la tierra y los recursos.

La Federación Rusa propuso la reformulación de las previsiones de la Declaración que trataban sobre la autodeterminación para que reflejaran una amplia autonomía de los pueblos indígenas dentro de las fronteras nacionales sin plantear un detrimento a la integridad territorial del Estado. La Constitución Rusa tomó en cuenta los principios contenidos en las previsiones sobre tierra y recursos de la Declaración concernientes con el vínculo particular de los pueblos indígenas con su tierra. Nueva Zelanda aceptaba el derecho a la autodeterminación para los pueblos indígenas en la Declaración, si el significado del término era claramente elaborado de una forma coherente con el entendimiento interno de Nueva Zelanda de la relación entre los *maori* y la Corona. Algunas de los actuales textos de la Declaración (por ejemplo, referencias a la autonomía, autogobierno y sistemas separados legales, impositivos y judiciales) no eran consecuentes con la política de Nueva Zelanda y más apropiados a la situación de pueblos indígenas que viven en reservas que a la de aquellos integrados en la sociedad más amplia, como en Nueva Zelanda. La redacción de la Declaración necesitaría ser aclarada para asegurar coherencia con los procesos y políticas de acuerdo con respecto al Tratado de Waitingi, con los entendimientos internacionales y con la legislación interna neozelandesa.

Ecuador expresó su compromiso de trabajar con representantes indígenas para encontrar una solución justa y equilibrada con relación al tema de la autodeterminación. La Constitución de Ecuador reconocía la diversidad de culturas y lenguas, estableciendo a Ecuador como un estado pluricultural y multiétnico. Desde la transición a la democracia en 1979, había sido garantizada la participación política de pueblos indígenas y pueblos afro-ecuatorianos y los procesos de participación política habían sido más consolidados hasta garantizar los derechos colectivos a mantener, desarrollar y fortalecer las tradiciones indígenas. En particular, Ecuador reconocía el derecho a la propiedad de tierras comunales, el derecho a participar en el uso, administración y conservación de recursos naturales renovables, el derecho a ser consultado con relación a la explotación de recursos naturales no-renovables así como a beneficiarse de los resultados de la explotación de tales recursos, cuando fuera posible recibir compensación por cualquier daño causado, así como también reconocía los derechos colectivos de propiedad intelectual sobre el conocimiento ancestral. Este enfoque positivo condujo a Ecuador a apelar a los Estados con dificultades con el concepto de autodeterminación a llegar a un acuerdo para ubicar a los derechos indígenas en conformidad con el derecho internacional existente y la Carta de la ONU.

España apoyó el derecho de los pueblos indígenas a la autodeterminación, entendiéndolo como un proceso interno de descentralización política, geográfica y administrativa, que permita a los pueblos indígenas participar en todos los niveles de la toma de decisión, pero que no influya sobre la integridad territorial de los Estados democráticos. España apoyó una iniciativa de Dinamarca de celebrar seminarios en los cuales los Estados y los pueblos indígenas podrían tratar de lograr algún entendimiento común con relación a la autodeterminación. El representante del Banco Mundial se refirió a temas relativos a la tenencia de la tierra y el control sobre los recursos naturales como condiciones esenciales para la erradicación de la pobreza. La discusión sobre derechos a la tierra y a los recursos son aspectos normativos del desarrollo que deberían ser respetados y cultivados.

Cuba apoyó la inclusión del derecho a la autodeterminación en la Declaración, refiriéndose a la Carta de la ONU y a la *Declaración de Relaciones Amistosas* de la Asamblea General. Las preocupaciones de algunos Estados no estaban totalmente fundamentadas pues la *Declaración de Relaciones Amistosas* protegía adecuadamente la unidad política y la integridad territorial de los Estados. Japón declaró que no había ningún instrumento internacional dentro de la ONU que se refiriera a los derechos colectivos. Según

Japón, el ser humano es el sujeto central de los derechos humanos y tales derechos humanos pueden ser ejercidos en comunidad con otros (artículo 3 de la Declaración de la ONU sobre los Derechos de las Minorías). Era importante no asumir un enfoque discriminatorio en la Declaración y otorgar a los pueblos indígenas derechos colectivos que ningún otro grupo goza.

Paquistán consideraba que las preocupaciones de algunos Estados con relación a la integridad territorial no estaban bien fundamentadas. Según Paquistán, no había ninguna contradicción entre autodeterminación e integridad territorial, por el contrario, estos eran principios que se reforzaban mutuamente, que fortalecían los valores democráticos a nivel nacional e internacional. Paquistán también se refirió a la *Declaración de Relaciones Amistosas*. Según Paquistán, era erróneo asociar la autodeterminación con el proceso histórico de descolonización. No fue la descolonización que condujo al surgimiento de la autodeterminación, sino más bien la autodeterminación la que requería el proceso de descolonización. La Constitución mexicana reconocía formas particulares de autodeterminación, incluyendo el control, en la medida de lo posible, de los pueblos indígenas de su propio desarrollo. Además, las constituciones locales de México encaraban la autodeterminación de diferentes formas. Bangladesh se refirió a la aceptación global de la autodeterminación como un derecho que incluye el derecho a respetar y preservar las identidades de las comunidades indígenas. Sin embargo, la dicotomía indígena/no-indígena no se aplicaba en Bangladesh, país que todavía se aferraba a las cuestiones de definición. Como parte del grupo asiático, sin embargo, Bangladesh había decidido poner de lado el debate sobre la definición de pueblos indígenas en el momento actual.

En su resumen concluyente del debate general, el Presidente comentó que la mayor parte del debate había implicado una repetición de posiciones previas, sin aportar ningún material nuevo. No obstante, subrayó algunos aspectos positivos, incluyendo una mayor flexibilidad, disposición a escuchar y a tomar en cuenta posiciones de otros participantes, así como el reconocimiento de que el diálogo formal, rígido, no permitirá ningún progreso en el CHRWG. Expresó su apoyo a un enfoque que estuviera centrado en los artículos más difíciles e intensificara el diálogo sobre temas fundamentales, mientras que al mismo tiempo se podían considerar los artículos más fáciles para lograr un acuerdo y generar la suficiente confianza para tratar, en un momento apropiado, los temas más sensibles de la Declaración.

Artículos 1, 2, 12, 13, 14, 44 y 45: el enfoque general de las delegaciones de los Estados

En 1998, en la 4ª sesión del CHRWG, el entonces Presidente Urrutia recibió un documento informal que planteaba propuestas concretas de una serie de delegaciones de los Estados, especialmente Australia, Canadá y los EE.UU., con relación a los artículos 15 a 18 de la Declaración. Los representantes indígenas expresaron una grave preocupación por no haber participado en la elaboración de este documento no-consensual, y subrayaron que el CHRWG no tiene mandato para dedicarse a ejercicios de redacción o negociación. En respuesta, el entonces Presidente Urrutia confirmó que el documento no era un documento del Presidente o del Secretariado y que el CHRWG no estaba abocado a actividades de redacción o negociación.

En la 5ª y 6ª sesiones, el Presidente Chávez solicitó a las delegaciones estatales que continuaran sus consultas informales en vista a acercar posiciones divergentes. Así, el Presidente alentó activamente los esfuerzos de los Estados de negociar redacciones alternativas para el texto actual. En la 6ª sesión, las consultas se centraron en los artículos 1, 2, 12, 13, 14, 44 y 45 y se elaboraron 7 documentos para discusión en sesiones plenarias informales. En la primera de esas sesiones plenarias, el Presidente Chávez refirió a los participantes el resumen del debate general sobre estas previsiones en sesiones previas, en particular en la 2ª y 5ª sesiones en 1996 y 1999 respectivamente (UN Doc. E/CN 4/1997/102 y E/CN 4/2000/84).

Al introducir el punto de la agenda, el Presidente Chávez destacó la necesidad de demostrar un progreso concreto al CHR. Aunque no anticipó que sería posible alcanzar un consenso sobre ninguna de las propuestas, propuso permitir propuestas específicas y oír comentarios sobre las mismas. En particular, alentó las propuestas colectivas. El Párrafo 97 del informe de la 6ª sesión prevé que en todos los 7 documentos de discusión, el término pueblos apareciera entre paréntesis. El párrafo continúa así:

> *"... Anexo 1 de este informe contiene una nota explicatoria donde se reflejan las diferentes posiciones de las delegaciones gubernamentales en conexión con el uso del término 'pueblos' en las propuestas que han presentado. Se hizo notar que todas las delegaciones indígenas y algunas delegaciones gubernamentales pueden aceptar el uso del término pueblos indígenas.*

98. Los representantes indígenas se opusieron a la inclusión de las propuestas presentadas por los gobiernos en el Anexo 1 de este informe así como a la nota explicatoria sobre el término 'pueblos' porque fueron presentadas con objetivos de discusión y el contenido del documento de discusión aparece en el informe. También solicitaron la inclusión de una declaración sobre el uso del término 'pueblos' en el anexo 2 de este informe, el cual contiene las propuestas de los representantes indígenas. La Presidencia decidió que tanto las propuestas como la nota fueran incluidas en el Anexo 1".

Artículos 1, 2, 12, 13, 14, 44 y 45: el enfoque de las delegaciones indígenas

Muchas delegaciones indígenas mantuvieron una fuerte oposición a comentar cualquier otra cosa que el texto original de la Declaración, tal como lo aprobó la Subcomisión. Estas delegaciones consideraron que los documentos de discusión de los Estados reflejaban un alejamiento inaceptable de los métodos de trabajo consensuales acordados en las sesiones previas del CHRWG. Los métodos de trabajo acordados habían sido centrarse en el texto original como base de toda discusión. Cualquier comentario dirigido a los documentos de discusión de los Estados implicaba una tácita aceptación de la inevitabilidad del cambio de texto y legitimaba el enfoque de aquellos Estados que más agresivamente procuraban tal cambio.

Otros participantes indígenas, como el Consejo Saami, ICC, la Asamblea de Primeras Naciones, el Centro Indio de Recursos Legales, la Nación Navajo, la Comisión de Aborígenes e Isleños del Estrecho Torres y otras delegaciones indígenas de Australia y muchas delegaciones indígenas de Asia, analizaron las propuestas de los Estados para determinar si lograban refutar la muy elevada presunción sobre la integridad del texto actual. Evaluaron si los cambios propuestos eran razonables, necesarios, mejoraban y fortalecían el texto existente y estaban conformes con el principio de igualdad y la prohibición de la discriminación racial. Estos participantes concluyeron que la mayoría de los cambios propuestos carecían de toda justificación y frecuentemente obscurecían la claridad del texto existente o lo debilitaban.

Paul Chartrand, en nombre del Consejo Nacional Metis, propuso una prueba de claridad funcional, de acuerdo a la cual *"una cosa es lo suficientemente buena si cumple con su cometido"*. Para refutar la presunción de la validez del texto actual, la prueba consistía en ver sí la redacción era tan ambigua, su significado tan opaco que no lograba identificar el tema concerniente al artículo. De acuerdo con esta prueba, al preguntar sí la redacción de la Declaración era lo suficientemente clara, los Estados deberían consultar con los pueblos indígenas debido a: (i) su obligación como Miembros de las Naciones Unidas con relación a la autodeterminación; y (ii) los valores fundamentales de la democracia requieren la elaboración y la implementación de la política del Estado en consulta con los supuestos beneficiarios.

Artículo 45

El artículo 45 de la Declaración, tal como está redactado, prevé:

> *"Nada en esta Declaración puede ser interpretado como implicando para cualquier Estado, grupo o persona ningún derecho a comprometerse en ninguna actividad o realizar cualquier acto contrario a la Carta de las Naciones Unidas".*

El documento de discusión de los Estados sobre el artículo 45 no proponía un texto alternativo, sin embargo, comentaba que:

> *"Aunque no se propone ninguna redacción alternativa, este artículo todavía no está pronto para su adopción, porque condiciona a toda la Declaración y tendrá que ser revisado en una etapa posterior".*

Numerosas delegaciones indígenas hicieron un llamado a los Estados para que demostraran un progreso tangible en consideración a la Declaración mediante la adopción, en primera lectura, del artículo 45. Varios representantes comentaron que, sin la adopción del artículo 45, la sugerencia de que la ausencia de una redacción alternativa constituye un progreso es ilusoria. Se refirieron al compromiso del CHRWG de lograr resultados concretos y enfatizaron la importancia de gestos sólidos, generadores de confianza, de parte de los Estados. Muchos representantes indígenas recordaron a los participantes que el CHRWG estaba actualmente dedicado a una primera lectura de la Declaración. Se declaró que el propósito de una primera lectura era lograr un amplio acuerdo en la redacción de las previsiones. En la primera lectura, se anotaban todos los asuntos que requerían una revisión en una etapa posterior. El propósito de una segunda lectura era encarar cualquier asunto identificado en la primera lectura para ser revisado en una etapa posterior. El objetivo de una segunda lectura era considerar el ajuste que se dijo era requerido como resultado de la adopción en primera lectura del proyecto de texto en su conjunto. Varios representantes indígenas recordaron a los participantes que el artículo 45 de la Declaración está basado en el artículo 30 de la Declaración Universal de Derechos Humanos ("**UDHR**").

Entre los Estados que se pronunciaron contra la adopción del artículo 45 estaban Australia y los EE.UU. Argentina expresó que la previsión no era importante, que era "un texto estándar, casi marginal" que tenía precedentes y podía ser adoptado en su forma actual. Dinamarca comentó que la previsión trataba un tema de procedimiento y debía ser tratada en una etapa posterior. El representante de Dinamarca subrayó la interrelación de todas las previsiones de la Declaración.

El Presidente se resistió a los llamados para intentar una adopción provisoria del artículo 45, expresando que el consenso entre los Estados era de posponer su adopción, como se establecía en el documento de discusión que había sido presentado.

Artículo 44

El artículo 44 de la declaración, tal como está redactado, prevé:

> *"Nada en esta Declaración puede ser interpretado como una disminución o extinción de derechos existentes o futuros que los pueblos indígenas tengan o adquieran".*

La redacción alternativa propuesta en el documento de discusión de los Estados agrega paréntesis angulares en torno a la palabra pueblos. Bajo el título "Puntos para más Discusión", el documento de discusión dice:

> *"El termino 'existentes o futuros' es redundante en la versión inglesa; no es coherente con los textos en español y francés, que son más claros. Sugerimos*

> *que la versión inglesa sea revisada para hacerla coherente con las versiones española y francesa. La mejora de la redacción puede ser lograda mediante la consideración de otros instrumentos internacionales, aunque la redacción actual sirve su propósito".*

Ecuador y Suecia apoyaron el artículo 44 en su actual redacción. Suiza apoyó el artículo como está, y comentó que debería ser también posible eliminar los paréntesis angulares en torno al término pueblos indígenas y realizar un debate concerniente al término pueblos indígenas en conexión con el artículo 3. Guatemala declaró que no debería haber ninguna calificación, limitación o restricción de la palabra pueblos. Según Guatemala, el concepto de autodeterminación no tenía sentido si era usado en conexión con el término poblaciones, en vez de pueblos. España podía apoyar similarmente el artículo 44 como está, notando que la referencia a pueblos indígenas no presentaba ninguna dificultad. Francia estaba dispuesta a aceptar la redacción actual, en particular el término pueblos, aunque Francia preferiría la expresión "pueblos o individuos". Varios Estados, como Australia, Canadá, Dinamarca, Finlandia, Nueva Zelanda, Noruega y la Federación Rusa, indicaron que podían aceptar el artículo 44 en su actual redacción, pero opinaban que el texto podía ser mejorado, en particular homogeneizando las diferentes versiones idiomáticas. Los EE.UU. apoyaron la propuesta del Presidente de poner el término pueblos entre paréntesis.

En numerosas intervenciones, los representantes indígenas declararon que en consideración a la Declaración, no podían aceptar, ahora o en el futuro, ningún paréntesis en el término pueblos indígenas. Los oradores indígenas exhortaron a aquellos pocos Estados que se oponen al uso del término pueblos indígenas a que consideren que su resistencia se ha convertido en el mayor obstáculo para el progreso en el CHRWG y que reflexionaran sobre el efecto desestabilizador que tal intransigencia estaba teniendo en la generación de confianza. El representante de ATSIC apeló a aquellos Estados que no tienen problemas con el término pueblos indígenas a *"ayudarnos en garantizar que la ONU aplique sus propias normas universalmente e igualmente, que actúe sin prejuicios y sin discriminación. Nosotros apreciaríamos su apoyo para encontrar una forma de continuar nuestra discusión de la Declaración sin poner la 's'* (en inglés, la diferencia entre 'pueblos' o 'personas, poblaciones, etc.,' radica en la 's' de 'peoples' en oposición a 'people', N.d.T.) *de pueblos indígenas entre paréntesis"*. Varios oradores indígenas hicieron un llamado a aquellos Estados que disienten de la tendencia general para que dejen constancia de sus reservas, en lenguaje acorde a las líneas contenidas en el párrafo 4 de los informes del CHRWG, pero que no insistan en paréntesis angulares, impidiendo, así, el avance de la discusión de la Declaración.

Artículo 1

El artículo 1 de la Declaración, tal como está redactado, prevé:

> *"Los pueblos indígenas tienen el derecho al goce pleno y efectivo de todos los derechos humanos y libertades fundamentales consagrados en la Carta de las Naciones Unidas, la Declaración Universal de Derechos Humanos y en la legislación internacional sobre derechos humanos".*

La redacción alternativa propuesta en el documento de discusión de los Estados (i) pone la palabra pueblos entre paréntesis angulares; (ii) introduce una referencia a los individuos indígenas; (iii) introduce antes de la frase "legislación internacional sobre derechos humanos" el adjetivo "aplicable"; (iv) reemplaza el término "legislación" por "instrumentos"; y (v) introduce un nuevo segundo párrafo que prevé:

> *[2. Los individuos indígenas pueden ejercer sus derechos, incluyendo aquellos establecidos en esta declaración, individualmente o en comunidad con otros miembros de su grupo, sin ninguna discriminación.]"*

Guatemala y México apoyaron el texto original del artículo 1. Dinamarca, Ecuador, Finlandia y Suiza tampoco tenían dificultades con el texto original. Noruega aceptó el texto tal como estaba redactado pero estaba abierta a mejorar y fortalecer el texto y solucionar las preocupaciones razonables de otras delegaciones.

Australia, Canadá, Japón, Noruega, España, Suecia y los EE.UU., apoyaron la introducción del adjetivo "aplicable" para calificar a "legislación internacional de derechos humanos". Dinamarca, Finlandia y Suiza podían aceptar una referencia a "aplicable", incluso si, de acuerdo a Suiza, tal referencia agregaba poco. Guatemala no consideró que tal referencia fuera apropiada, ni Dinamarca vio ninguna necesidad de introducir tal referencia. Ecuador consideró similarmente que el texto actual era bastante claro.

Canadá hizo énfasis en la importancia de una referencia a individuos indígenas en el primer artículo de la Declaración. Lo mismo hicieron Japón, Nueva Zelanda, la Federación Rusa y España. Ecuador consideró que tal referencia podría ser bastante útil, con la condición de que se mantuviera la referencia a los derechos colectivos. Finlandia podía aceptar esa referencia. Como compromiso, Suiza también podía aceptar una referencia a los individuos.

Canadá rechazó la restricción propuesta a "instrumentos internacionales de derechos humanos", en vez de "legislación internacional sobre derechos humanos", porque tal restricción excluía el cuerpo del derecho consuetudinario internacional. Lo mismo hicieron Dinamarca, Guatemala, Noruega, España y Suiza. Los EE.UU. abogaron por el uso del término "instrumentos", el cual, dijeron, incluía el derecho consuetudinario internacional.

Japón y los EE.UU. apoyaron el segundo párrafo propuesto del artículo 1. Suecia también apoyó el párrafo, cuya redacción proviene del artículo 27 del ICCPR y de la Declaración de la ONU sobre Derechos de Personas pertenecientes a Minorías Nacionales o Étnicas, Religiosas y Lingüísticas de 1992. Canadá, Dinamarca, Finlandia, Guatemala, Noruega, España y Suiza se opusieron al propuesto segundo párrafo, y Noruega comentó que no agregaba nada de valor al texto actual.

Los representantes indígenas comentaron que la propuesta introducción de una referencia a individuos indígenas era innecesaria, refiriéndose a la protección conferida a los individuos por, entre otros, los artículos 2, 5, 6, 7, 8, 9, 18, 22, 32, 33, 43 y 45 de la Declaración. Se sostuvo que los individuos indígenas ya gozan, en teoría aunque no en la práctica, de todo el cuerpo del derecho internacional sobre derechos humanos concerniente a los derechos del individuo. Como en sesiones previas del CHRWG, los oradores indígenas rechazaron la propuesta introducción de una referencia a "aplicable" como innecesaria para mejorar la claridad del texto, o por cualquier otra razón. El representante de ATSIC planteó la interrogante: *"¿Seguramente ninguna delegación estatal está sugiriendo que el texto, tal como está redactado, puede ser interpretado como refiriéndose a legislación internacional de derechos humanos inaplicable?"*.

Los oradores indígenas rechazaron constantemente la propuesta limitación a los instrumentos internacionales sobre derechos humanos en vez de legislación, por constituir un inaceptable debilitamiento del texto, cuyo efecto era excluir el cuerpo del derecho consuetudinario internacional. Con relación a la intervención de los EE.UU., una delegación indígena no podía comprender cómo el término "instrumentos" podría ser interpretado como incluyente del derecho consuetudinario internacional.

Como muchos Estados, los representantes indígenas rechazaron el propuesto segundo párrafo por no contribuir en nada al fortalecimiento o aclaración del texto. El representante de ATSIC, por ejemplo, declaró que los derechos de los individuos indígenas y el concepto de no-discriminación ya están adecuadamente tratados en otras partes de la Declaración. El representante de ATSIC continuó diciendo: *"Y con respecto a la referencia al ejercicio de los derechos 'individualmente así como en comunidad con otros miembros del grupo', nos oponemos vigorosamente a cualquier intento – involuntario o subrepticio – de introducir en la Declaración una redacción que es asociada con normas internacionales sobre los derechos de las minorías. Está bien establecido que los pueblos indígenas y las minorías étnicas son conceptualmente grupos distintos. Este grupo de trabajo no debe ser utilizado como un foro para volver a agitar cuestiones que ya han sido establecidas en otras partes"*.

Artículo 2

El artículo 2 de la Declaración, tal como está redactado, prevé:

> *"Los individuos y pueblos indígenas son libres e iguales a todos los otros individuos y pueblos en dignidad y derechos, y tienen el derecho a ser libres de cualquier tipo de discriminación adversa, en particular aquella basada en su origen o identidad indígenas".*

La redacción alternativa propuesta en el documento de discusión de los Estados (i) pone entre paréntesis angulares las palabras "y pueblos"; (ii) pone entre paréntesis angulares el adjetivo "adversa"; y (iii) introduce una segunda frase nueva que prevé:

> *"Esto no impide medidas especiales como las contempladas en el artículo 1.4 del Convenio Internacional para la Eliminación de Todas las Formas de Discriminación Racial".*

Finlandia, Noruega y Suiza podían aceptar el artículo 2 en su texto actual.

Los EE.UU. y el R.U. apoyaban que la redacción del artículo 2 fuera más próxima a la del artículo 2 del UDHR. Australia y Guatemala comentaron que el adjetivo "adversa" podía ser eliminado. Ecuador, Guatemala y Noruega también apoyaban la eliminación de "adversa".

Australia y Guatemala apoyaban la introducción de la segunda frase. Canadá consideró preferible una referencia explícita a "medidas especiales" para evitar cualquier duda. Ecuador y Finlandia podían apoyar esa propuesta. Noruega consideraba que la propuesta requería más discusión.

Los representantes indígenas declararon que las propuestas de los Estados relativas al artículo 2 ni fortalecían ni aclaraban el texto y, por lo tanto, no eran ni necesarias ni aceptables. Se declaró que el adjetivo "adversa" estaba útilmente utilizado en el artículo 2 para distinguir entre la discriminación adversa y la discriminación positiva o acción afirmativa. Similarmente, los representantes indígenas declararon que la propuesta segunda frase, con su referencia a medidas especiales, era superflua. Se hizo notar, por ejemplo, que los Comentarios Generales del Comité de Derechos Humanos y del Comité CERD confirmaban que la garantía de igualdad y no-discriminación comprende medidas especiales. Es decir, la jurisprudencia internacional ya estableció que las medidas especiales eran coherentes con la garantía de igualdad y no-discriminación.

Artículo 12

El artículo 12 de la Declaración, tal como está redactado, prevé:

> *"Los pueblos indígenas tienen el derecho a practicar y revitalizar sus tradiciones culturales y costumbres. Esto incluye el derecho a mantener, proteger y desarrollar las manifestaciones pasadas, presentes y futuras de sus culturas, como sitios arqueológicos e históricos, artefactos, diseños, ceremonias, tecnologías y artes visuales y representativas y literatura, así como también*

el derecho a la restitución de la propiedad cultural, intelectual, religiosa y espiritual tomadas sin su libre e informado consentimiento o en violación de sus leyes, tradiciones y costumbres".

La redacción alternativa propuesta por el documento de discusión de los Estados contiene numerosos paréntesis angulares y propuestas en relación al artículo 12. Sin plantear cada propuesta, el principal propósito de la redacción alternativa es (i) poner la palabra pueblos entre paréntesis angulares; (ii) introducir al fin de la primera frase una referencia entre paréntesis angulares a "en conformidad con la legislación interna"; (iii) tratar en párrafos separados el reconocimiento del derecho a practicar y revitalizar tradiciones culturales y el tema de la devolución de la propiedad cultural; (iv) poner la palabra "intelectual" entre paréntesis angulares; y (v) introducir en conexión a la propiedad tomada sin consentimiento una limitación temporal a la propiedad tomada "después de que esta Declaración entre en vigor". Los comentarios acompañantes prevén que aunque algunos Estados están preocupados con la potencial aplicación retroactiva de esta parte del artículo 12, *"[o]tros estados aceptan que este párrafo se podría aplicar a propiedad tomada en el pasado"*. Los comentarios también brindan varias propuestas para un nuevo párrafo general sobre los derechos de las terceras partes.

Finlandia consideró que las previsiones de la Parte III de la Declaración, a la cual pertenece el artículo 12, eran las menos polémicas de la Declaración. De acuerdo a esto, Finlandia podía aceptar el artículo 12 tal como estaba redactado. Guatemala también podía aceptar la redacción pero estabas dispuesta a discutir redacciones alternativas para hacer posible un consenso. Brasil no tenía ninguna dificultad particular con la primera parte del artículo 12. Sin embargo, Brasil tenía preocupaciones con relación a la potencial aplicación retroactiva de la segunda parte del párrafo del artículo sobre propiedad tomada en el pasado. Por esta razón, Brasil prefería la redacción de "los mejores esfuerzos posibles". Australia comentó sobre la necesidad de tener en cuenta los derechos de otros y consideró que el tema de la propiedad intelectual podía ser tratado mejor en el artículo 29. Australia no tenía dificultad con la aplicación retroactiva del artículo 12. Dinamarca podía aceptar los primeros dos tercios del artículo 12 tal como estaban redactados, pero propuso que el tratamiento de las palabras posteriores a "literatura" que trataban sobre la restitución estuviera en un párrafo separado. Dinamarca también consideró meritoria la inserción de un artículo separado que tratara sobre los derechos de las terceras partes, aunque no expresó ninguna preferencia por una redacción en particular en el momento actual.

Nueva Zelanda consideró que la segunda frase necesitaba ser atemperada mediante una referencia apropiada al interés público, posiblemente mediante la redacción de "en la medida de lo practicable". Nueva Zelanda prefería una aclaración de la parte del artículo 12 que trata sobre la restitución para asegurar su coherencia con convenios existentes sobre propiedad intelectual y la legislación interna de Nueva Zelanda, y consideró ventajoso trasladar esta parte del artículo al fin del artículo 29. En relación con la primera frase del artículo 12, Japón apoyó la introducción de las palabras "en la misma medida que otros ciudadanos". Con relación a la segunda parte del artículo 12, Japón consideró que cualquier restitución debería estar basada en leyes nacionales apropiadas, igualmente aplicadas a todas las otras personas, y debería referir a propiedad tomada en "violación a leyes y regulaciones pertinentes", en vez de en "violación de sus leyes, tradiciones y costumbres".

Suecia apoyó la primera frase tal como estaba redactada. Con relación a la 2ª frase, Suecia apoyó 2 párrafos, el 2º de los cuales comenzaría "los Estados realizarán sus mejores esfuerzos para promover la devolución a los pueblos indígenas de...". Canadá apoyó similarmente la inserción de 2 párrafos. En relación con el tema de los derechos de terceras partes, Canadá apoyó el uso de una redacción consecuente con el artículo 18(3) del ICCPR. Canadá también comentó que el tema de la propiedad intelectual estaba substancialmente tratado en el artículo 29 y, por lo tanto, propuso la eliminación del término "intelectual" en el nuevo párrafo propuesto que trata sobre la devolución de propiedad. La redacción propuesta por Canadá incluía el mandatorio "deben" en vez de "deberían" como lo propusieron otras delegaciones de los Estados.

Francia consideraba que la redacción actual del artículo 12 era demasiado vaga, especialmente con relación a la restitución y compartía las preocupaciones de algunas delegaciones en relación a los derechos de terceras partes. Francia apoyaba un artículo separado que tratara de la restitución. Suiza apoyaba la primera mitad del artículo 12 y en relación con la segunda mitad apoyaba la eliminación de la referencia a la propiedad intelectual.

Los representantes indígenas expresaron alarma ante el gran número de paréntesis y limitaciones propuestos por los Estados. Las delegaciones indígenas también protestaron contra la forma en cómo había sido presentado el documento de discusión sobre el artículo 12. Fue presentado solamente en inglés, esperándose que las delegaciones analizaran las 25 propuestas en el momento, consultaran con relación a las mismas y prepararan intervenciones en respuesta. Se preguntó sí algún Estado podría sugerir seriamente que el proceso aseguraba una igual y efectiva participación de las delegaciones indígenas.

En sus intervenciones sobre el artículo 12, los representantes indígenas se refirieron otra vez a los inaceptables paréntesis de la palabra pueblos. Numerosos representantes comentaron sobre el inaceptable debilitamiento del texto actual introducido por la referencia propuesta a "en conformidad con la legislación interna". El efecto de limitar el artículo 12 o cualquier otro artículo a operar en conformidad con legislación interna existente sería convertir a los derechos contenidos en la Declaración en derechos ineficaces y permitir que la Declaración se convirtiera en un instrumento para proteger el *status quo* de los Estados.

Similarmente, las delegaciones indígenas declararon que la propuesta para introducir la expresión "en la medida de lo practicable" para calificar los derechos referidos en el artículo 12 representaba un debilitamiento inaceptable del texto. Una delegación comentó que en la implementación de todos los derechos de la Declaración, las consideraciones de disponibilidad de recursos y otros temas prácticos jugarían un importante papel. Sin embargo, se declaró, estos son temas que están relacionados con todas las garantías de los derechos humanos, y no sólo con los de esta Declaración. No había razón para calificar ninguno de los derechos reconocidos en la Declaración. Es más, se dijo, los temas de implementación estaban adecuadamente tratados en el artículo 37. Por razones similares los oradores indígenas también se opusieron a la introducción de cualquier redacción que introdujera "mejores" o "apropiados" esfuerzos para calificar las normas mínimas contenidas en la Declaración.

En forma consecuente con intervenciones previas, los oradores indígenas se opusieron vigorosamente a la introducción de la palabra "deberían" en el segundo párrafo de la redacción alternativa propuesta. Varios oradores se refirieron a la declaración de la delegación suiza en sesiones previas del CHRWG de que la Declaración debe ser redactada en forma consecuente con la UDHR. Los oradores indígenas expresaron una particular oposición a la propuesta de redactar de nuevo el párrafo 2 para destruir el concepto de un derecho a la restitución de propiedad cultural, intelectual, religiosa y espiritual. Se declaró que el efecto de volver a redactarlo sería eliminar toda obligación de los Estados. La aplicación no retroactiva del párrafo lo pondría en conflicto directo con la prohibición internacional de la discriminación racial. Las propuestas de los Estados convertían al derecho en un derecho condicional de las leyes y regulaciones pertinentes y, por lo tanto, dependiente de la voluntad de los que elaboran las leyes internas y la política. Se declaró que la eliminación de la referencia a la propiedad intelectual socavaba severamente la protección provista en el texto actual. Aunque el artículo 29 trataba el tema de la propiedad intelectual, no encaraba el tema de la restitución tratado en el artículo 12, tal como está redactado.

Finalmente, con respecto a las preocupaciones de algunos Estados con relación a los derechos de terceras partes, se hizo notar que los redactores del Convenio N° 169 de la OIT no habían considerado que esa limitación fuera necesaria en ese instrumento. Conforme a esto, no debería tener lugar en la Declaración de la ONU.

Artículo 14

El artículo 14 de la Declaración, tal como está redactado, prevé:

> *"Los pueblos indígenas tienen el derecho a revitalizar, usar, desarrollar y transmitir a futuras generaciones sus historias, lenguas, tradiciones orales,*

filosofías, sistemas de escritura y literaturas, y de designar y mantener sus propios nombres de comunidades, lugares y personas".

Los Estados tomarán medidas efectivas, cuando cualquier derecho de los pueblos indígenas pueda ser amenazado, para asegurar que este derecho sea protegido y también asegurar que ellos puedan comprender y ser comprendidos en los procedimientos políticos, legales y administrativos, cuando sea necesario mediante la provisión de interpretación u otros medios apropiados".

La redacción alternativa propuesta en el documento de discusión de los Estados (i) pone entre paréntesis angulares la palabra pueblos; y (ii) pone el segundo párrafo entre paréntesis angulares, con el comentario de que los temas contenidos en el párrafo deberían ser tratados en el contexto de otros artículos de la Declaración, en particular:

- *"Los Estados tomarán medidas efectivas, cuando cualquier derecho de los pueblos indígenas pueda ser amenazado, para asegurar que este derecho sea protegido" debería ser considerado en el contexto de los artículos 37 y 39; y*

- *"para asegurar que, cuando sea necesario, ellos puedan comprender y ser comprendidos en los procedimientos políticos, legales y administrativos, aportando los recursos de traducción o cualquier otro medio apropiado" debería ser considerado en el contexto del artículo 19.*

Ecuador no tuvo dificultades en aceptar ambos parágrafos del artículo 14 tal como fue tratado, ya que éste no era otra cosa que la aplicación de los principios de derechos humanos universalmente reconocidos respecto a los pueblos indígenas. Dinamarca, Finlandia, Noruega, la Federación Rusa, España, Suecia y Suiza podían aceptar el artículo 14 tal como estaba redactado, pero estaban de acuerdo en que podría ser más apropiado tratar la segunda parte del artículo 14 en otra parte de la Declaración. Dinamarca y las Filipinas no apoyaron la limitación de la redacción del segundo párrafo "cuando cualquier derecho de los pueblos indígenas pueda ser amenazado". En una actitud aplaudida por numerosas delegaciones indígenas, México se negó a asociarse a cualquier introducción de paréntesis angulares en el segundo párrafo del artículo 14. En relación al segundo párrafo, México propuso la eliminación de la calificación "cuando sea necesario" y la inserción de "y efectiva" después del adjetivo apropiado.

Ukrania apoyó la versión alternativa del artículo 14. Australia, Canadá, Francia y Nueva Zelanda apoyaron el primer párrafo del artículo 14 tal como estaba redactado (aunque Francia prefería verinserción de "y efectiva" después del adjetivo apropiado.

Ucrania apoyó la versión alternativa del artículo 14. Australia, Canadá, Francia y Nueva Zelanda apoyaron el primer párrafo del artículo 14 tal como estaba redactado (aunque Francia prefería ver una referencia a los derechos individuales), pero consideraron que los temas del segundo párrafo estarían mejor tratados en otra parte de la Declaración. Si la segunda parte fuera tratada en otra parte de la Declaración, Canadá, Dinamarca y Suecia quisieran ver una referencia en el artículo 14 a la obligación de los Estados a tomar medidas efectivas para asegurar que estos derechos sean protegidos. Brasil buscó una aclaración de las organizaciones de pueblos indígenas de la referencia a procedimientos "políticos" y "administrativos" en el segundo párrafo y de los costos de las implicaciones en circunstancias particulares. Argentina estaba igualmente preocupada sobre las implicaciones de costo de este aspecto del segundo párrafo.

Los representantes indígenas expresaron otra vez su preocupación por la falta de tiempo para preparar la discusión del documento de discusión de los Estados sobre el artículo 14. Aquellos pocos representantes indígenas que estaban en situación de participar en la discusión del artículo 14 exhortaron al CHRWG a adoptar el artículo 14 en su texto original, ya que no había propuestas para un texto alternativo.

Artículo 13

El artículo 13 de la Declaración, tal como está redactado, prevé:

> *"Los pueblos indígenas tienen el derecho a manifestar, practicar, desarrollar y enseñar sus tradiciones espirituales y religiosas, costumbres y ceremonias; el derecho a mantener, proteger y tener acceso en privacidad a sus sitios religiosos y culturales; el derecho al uso y el control de los objetos ceremoniales; y el derecho a la repatriación de los restos humanos.*
>
> *Los Estados tomarán medidas efectivas, en conjunción con los pueblos indígenas pertinentes, para asegurar que los lugares sagrados indígenas, incluyendo cementerios, sean preservados, respetados y protegidos".*

La redacción alternativa propuesta en el documento de discusión de los Estados (i) pone entre paréntesis angulares la palabra pueblos; (ii) inserta la expresión "de acuerdo con las normas de derechos humanos" después de "ceremonias" en la segunda línea; (iii) re-escribe el recordatorio del párrafo 1 como una obligación de los Estados a tomar medidas razonables; (iv) califica la referencia a la obligación de los Estados con la expresión "[s]ujeto a la legislación interna"; (v) reemplaza toda referencia a "tendrá" en el texto actual con la expresión "tendría"; (vi) introduce el adjetivo "razonable" antes de "acceso" en el primer párrafo; (vii) pone paréntesis angulares a la expresión "uso y control de objetos ceremoniales" en el primer párrafo y traslada esta redacción, con la calificación "cuando sea necesario" al fin del segundo párrafo; (viii) inserta paréntesis angulares después de "repatriación de restos humanos" una referencia a "y objetos funerarios asociados"; (ix) reemplaza la obligación del segundo párrafo a "tomar medidas efectivas" con la redacción de "hacer los mejores esfuerzos"; y (x) inserta el término "consulta" entre paréntesis angulares cerca de "en conjunción", en la primera línea del segundo párrafo.

El documento de discusión sobre el artículo 13 fue otra vez presentado sólo en inglés. No estuvo a disposición hasta la reunión final informal del Grupo de Trabajo, impidiendo así su discusión en la 6ª sesión. El Presidente propuso inicialmente incluir el documento en el informe de la sesión para que pudiera ser traducido y puesto a disposición en los idiomas oficiales de la ONU. Los representantes indígenas expresaron una fuerte oposición a la inclusión de la propuesta en el Anexo 1 del informe porque el anexo sólo contiene propuestas ya discutidas en el grupo de trabajo. Su inclusión, se dijo, representaría mal la discusión con relación al mismo. El Presidente accedió a la protesta de los participantes indígenas, haciendo notar que no había consenso con relación a la inclusión del documento de discusión en el artículo 13, en el anexo I.

Anexo 1: enmiendas propuestas por los Gobiernos para futura discusión

Como en el CHRWG5 de 1999, otra vez en el CHRWG6, los anexos al informe fueron objeto de mucha polémica. El Anexo I, titulado "ENMIENDAS PROPUESTAS POR LOS GOBIERNOS PARA FUTURA DISCUSIÓN", contiene los textos alternativos de los artículos 1, 2, 12, 14, 44 y 45 propuestos por los Estados en la 6ª sesión, así como también para los artículos 15, 16, 17 y 18 propuestos en la 5ª sesión. Además, el Anexo contiene una Nota Explicatoria sobre el uso entre paréntesis angulares del término pueblos indígenas en la Declaración.

De esta forma, los Estados han establecido sus propios textos, en vez del de la Declaración, como la base de futuras discusiones. El Anexo 1 no reproduce los comentarios encontrados en los documentos originales de discusión, los cuales reflejan que algunos Estados podían aceptar el texto tal cual estaba redactado, o que se oponían a cambios particulares propuestos. El Anexo 1 tampoco refleja el debate real en las sesiones plenarias informales durante las cuales, una importante cantidad de Estados indicaron que apoyaban el texto tal cual estaba redactado y se oponían a los cambios propuestos.

Los Estados también formalizaron sus propias sesiones intergubernamentales cerradas como mecanismo de facto *para volver a redactar la Declaración. De esta manera, están tratando de armar una Declaración, cuyo texto sea presentado a los representantes indígenas en sesiones plenarias como un* fait accompli. *Esto es suficientemente claro a partir del hecho de que las propuestas de los Estados reproducidas en el Anexo 1 están establecidas antes de que los representantes indígenas tengan alguna oportunidad de comentarlas en una sesión plenaria informal. Otra vez, el Anexo 1 no revela los grados variables de entusiasmo entre los Estados con respecto a este proceso.*

Durante el transcurso de la 6ª sesión, los representantes indígenas expresaron una preocupación particular con relación a lo que se dijo ser la naturaleza provocativa de la "Nota Explicatoria" sobre el término pueblos indígenas. Esta "Nota Explicatoria" está redactada en un lenguaje más específico y restrictivo que la contenida en el Anexo 1 del informe de la 5ª sesión (UN Doc. E/CN 4/200/WG 15/CRP 4) y en el párrafo 4 de los informes del CHRWG. Introduce, en particular, una nueva referencia al artículo 1(3) del Convenio Nº 169 de la OIT, así como nuevas posibles expresiones, "poblaciones indígenas" e "individuos en comunidad con otros". La Nota Explicatoria prevé:

> *"No hay consenso sobre el uso del término 'pueblos indígenas' en el Grupo de Trabajo sobre el Proyecto de Declaración (WGDD). Algunos Estados pueden aceptar el uso de 'pueblos indígenas'. Algunos Estados puede aceptar el uso del término 'pueblos indígenas' dejando pendiente la consideración del tema en el contexto de discusiones sobre el derecho a la autodeterminación. Otros Estados no pueden aceptar el uso del término 'pueblos indígenas', debido en parte a las implicaciones que este término puede tener en el derecho internacional, incluso con respecto a la autodeterminación y a los derechos individuales y colectivos. Algunas delegaciones han sugerido otros términos en la Declaración como 'individuos indígenas', 'personas pertenecientes a un grupo indígena', 'poblaciones indígenas', 'individuos en comunidad con otros' o 'personas pertenecientes a pueblos indígenas'. Además, los términos usados en los artículos en particular pueden variar, dependiendo del contexto. Algunas delegaciones han sugerido que sí el término 'pueblos indígenas' es usado, también deberíamos referir al Artículo 1.3 de OIT 169. Por lo tanto, el uso entre paréntesis del término 'pueblos indígenas' en el proyecto de Declaración es sin prejuicio de un eventual acuerdo sobre la terminología.* (subrayado agregado)

Anexo 2: enmiendas propuestas de representantes indígenas

En la 5ª sesión, en 1999, en respuesta al uso de paréntesis angulares en los documentos de discusión de los Estados, el Grupo Indígena propuso la inclusión de un "Anexo sobre el término pueblos indígenas" en el informe final. Ese anexo no fue incluido en el informe final. Sin embargo, en la 6ª sesión, el Presidente acordó incluir en el Anexo II, titulado "PROPUESTAS DE REPRESENTANTES INDÍGENAS", una "Nota explicatoria sobre el uso del término pueblos indígenas" preparada por el Grupo Indígena. Esa Nota Explicatoria establece la posición de los representantes de los pueblos indígenas con relación al término pueblos indígenas, previendo *inter alia*:

> *"No puede haber duda de que somos pueblos con identidades históricas, políticas y culturales distintas. Estamos unidos por nuestras historias como sociedades distintas, por nuestras lenguas, leyes, tradiciones. Además, las*

> *profundas relaciones sociales, económicas y espirituales de los pueblos indígenas con nuestras tierras, territorios y recursos, son únicas. Los pueblos indígenas son incuestionablemente pueblos en todo el sentido legal, político, social, cultural y etnológico del término. Sería discriminatorio, ilógico y acientífico identificarnos en la Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas como algo menos que pueblos. ...*
>
> *Nosotros seguimos insistiendo que las Naciones Unidas apliquen sus propias normas universalmente e igualitariamente, que nos acuerden los mismos derechos que a otros pueblos del mundo, que actúen sin prejuicio y sin discriminación. No podemos aceptar, ahora o en cualquier momento futuro en consideración de la Declaración, cualquier calificación, explicación, definición, paréntesis, comillas o notas de pie de página referentes al término pueblos indígenas o pueblos.*
>
> *El término pueblos indígenas está bien establecido en la práctica legal internacional y nacional y ha sido consecuentemente empleado por los mismos organismos expertos de tratados de derechos humanos de las Naciones Unidas. Finalmente, desde el establecimiento del grupo de trabajo de la Comisión de Derechos Humanos sobre la Declaración, en 1995, numerosos Estados han aceptado el uso del término pueblos indígenas".*

Resultados

La 6ª sesión del CHRWG no pudo contemplar la adopción de un solo artículo de la Declaración. En cambio, contempló la inclusión en el Anexo 1 de su informe de redacciones alternativas propuestas por los Estados para los artículos 1, 2, 12, 14, 44 y 45. Con las propuestas con relación a los artículos 15, 16, 17 y 18 anexadas al informe de la 5ª sesión, esto lleva a diez a los artículos de la Declaración con relación a los cuales los Estados han propuesto textos alternativos. Después de 6 sesiones del CHRWG, sólo dos artículos de la Declaración han sido adoptados, y estos lo fueron en 1998: el artículo 5 que prevé *"Todo individuo indígena tiene el derecho a una nacionalidad"*, y el artículo 43 que prevé *"Todos los derechos y libertades reconocidas aquí son igualmente garantizadas para los individuos indígenas masculinos y femeninos"*.

En cuanto a sus enfoques con respecto a la Declaración, las delegaciones Estatales pueden ser divididas en los siguientes tres bloques:

1. Aquellas que apoyan la adopción de algunos o todos los artículos en discusión tal como están redactados: las nórdicas (Dinamarca, Finlandia, Noruega, Suecia; las latinoamericanas (Brasil, Cuba, Ecuador, Guatemala, México), España y Suiza; Paquistán.

2. Aquellas que apoyan los principios contenidos en artículos particulares pero insisten en enmiendas al texto actual. Más flexibles: Francia, Nueva Zelanda, Perú, las Filipinas, Federación Rusa, Ucrania, Venezuela. Menos flexibles: Argentina, Bangladesh, Canadá, China.

3. Aquellas que se oponen a los principios fundamentales subyacentes en la Declaración, en particular, el concepto de autodeterminación, lenguas de pueblos indígenas y/o el reconocimiento de los derechos colectivos: Australia, Japón, el Reino Unido y los EE.UU.

Al evaluar la influencia relativa de cada una de estas posiciones, vale la pena notar que dos miembros del Consejo de Seguridad, el Reino Unido y los EE.UU., pertenecen al bloque que plantea objeciones conceptuales fundamentales. Otros tres miembros del Consejo de Seguridad, China, Francia y la Federación Rusa, están más cercanos al bloque de compromiso. Hablando en forma general, la 6ª sesión contempló un apoyo razonablemente fuerte a la Declaración de los gobiernos asiáticos (con la excepción de Japón), los latinoamericanos (especialmente Ecuador y Guatemala), los nórdicos (especialmente Dinamarca), España y Suiza; silencio de parte de los gobiernos africanos; continuadas intervenciones obstruccionistas del R.U.; continuos cambios positivos de Braos Estados durante la 6ª sesión puede ser evaluada de la siguiente manera:

1. Muy activos: Argentina, Australia, Bolivia, Brasil, Canadá, Dinamarca, Ecuador, Finlandia, Francia, Guatemala, Japón, México, Nueva Zelanda, Noruega, Federación Rusa, España, Suecia, Suiza, Venezuela, R.U. y los EE.UU.
2. Mayormente silenciosos: Bangladesh, Chile, China, Cuba, Mauricio, Paquistán, Perú, Filipinas, Ucrania.
3. Silenciosos: Bielorrusa, Colombia, Costa Rica, Egipto, Estonia, Alemania, la Santa Sede, India, Indonesia, Latvia, Malasia, Nepal, Panamá, Sudáfrica, Togo, Uruguay.
4. Asistieron anteriormente al CHRWG pero no asistieron a la 6ª sesión: Argelia, Angola, Austria, Bélgica, Bolivia, El Salvador, Etiopía, Fiji, Honduras, Irán, Iraq, Italia, Jordán, Kenia, Libia, Marruecos, Holanda, Nicaragua, Nigeria, Paraguay, Polonia, Portugal, Arabia Saudita, Corea del Sur, Sudán, Tailandia, Vietnam.

Vale la pena notar que la cantidad de Estados participantes en forma activa ha disminuido desde la primera sesión del CHRWG en 1995, con un creciente número de Estados que se registraron como participantes y permanecieron ausentes, en silencio o mayormente en silencio durante toda la 6ª sesión. También queda suficientemente claro que después de seis sesiones, los métodos de trabajo consensuales acordados con relación a todos los aspectos del trabajo del CHRWG han sido quebrantados. A pesar de mucha retórica sobre procesos inclusivos, transparentes, es evidente que los Estados han abierto el texto adoptado por el WGIP y la Subcomisión para volverlo a redactar. El debate general sobre el proceso que tuvo lugar durante la primera semana no logró asegurar ningún cambio en la formalización de sesiones intergubernamentales cerradas como un mecanismo *de facto* para volver a redactar la Declaración. A pesar de distintos grados de afinidad entre los Estados con respecto al ejercicio gubernamental de reredacción, ningún Estado ha estado dispuesto abiertamente a desafiar el enfoque ni a proponer métodos de trabajo alternativos.

A pesar de frecuentes afirmaciones de los Estados sobre la importancia de mantener un diálogo general sobre temas y conceptos fundamentales subyacentes a la Declaración, el valor de tal diálogo no es inmediatamente obvio. A pesar de tal diálogo formal, muchas preguntas planteadas por los representantes indígenas todavía no han recibido contestación. Similarmente, los numerosos intentos de los representantes indígenas de tratar temas planteados por los Estados han quedado sin respuesta. Virtualmente todos los cambios propuestos en los documentos de trabajo de los Estados sobre los artículos 1, 2, 12, 14, 44 y 45 han sido propuestos en una sesión previa. De la misma forma, casi todos los puntos tocados en una intervención indígena en defensa de esos artículos han sido tocados en una sesión previa. En sesiones previas, numerosas delegaciones estatales habían expresado su capacidad de aceptar los textos de estos artículos tal cual están redactados. Como resultado de su participación en las sesiones redactoras intergubernamentales informales, sin embargo, los Estados que estaban dispuestos al apoyo se encontraron a sí mismos cambiando de posición para acomodarse a las más inflexibles de las posiciones de los Estados, en un esfuerzo para llegar a un consenso.

Tampoco queda claro que los intentos informales para hacer progresar el diálogo hayan dado mejores resultados. Por ejemplo, en la mitad de la segunda semana de la 6ª sesión, se celebró una reunión informal, a la cual asistieron representantes indígenas y de los Estados y que fue co-presidida por un representante del Grupo Indígena y un representante de los Estados. La reunión hizo posible un ámbito menos formal donde intercambiar opiniones sobre temas como la autodeterminación, el término pueblos indígenas, derechos colectivos, el uso de la expresión deben / deberían, referencias a la legislación doméstica. El intercambio de opiniones consistió en el recitado por parte de las delegaciones de posiciones bien ensayadas y conocidas. No hubo una explicación de principios, por ejemplo, por parte de Australia de por qué ya no apoya la autodeterminación, a pesar de haber sido el primer Estado en el WGIP en apoyar su inclusión no calificada en la Declaración. Ni tampoco hubo ninguna justificación creíble del R.U. y de los EE.UU. por su insistencia de que debería usarse el término "deberían" en vez de "deberán", tal como se encuentra en la UDHR. Ni tampoco los

EE.UU. hicieron ningún intento de explicar la aparente inconsecuencia entre el reconocimiento de derechos colectivos y la autodeterminación en la legislación interna de los EE.UU., y la negativa empecinada de los EE.UU. de apoyar su reconocimiento internacionalmente.

Si los Estados son genuinos en su deseo de lograr una participación significativa de los representantes indígenas, deben encarar como un asunto prioritario las desigualdades de recursos disponibles a los representantes indígenas y a los Estados en términos de preparación y participación en el CHRWG. En relación con los documentos de discusión de los Estados, hubo insuficiente tiempo para analizar adecuadamente las propuestas, para reunirse y responder a los cambios de texto propuestos. Surgió una dificultad particular cuando los instigadores anglófonos del proceso no hicieron las previsiones adecuadas para que hubiera traducción. Esto puso a muchos representantes indígenas en una desventaja considerable en su capacidad de analizar y responder a los cambios propuestos. Tal enfoque improvisado sólo puede exacerbar el creciente sentimiento de alienación y frustración entre las delegaciones indígenas.

Dentro del Grupo Indígena, prevaleció otra vez la unanimidad formal. Sin embargo, a veces había más actividad entre las regiones y a través de las regiones que dentro del grupo. Como se informó previamente, desde el principio hubo una tensión dentro del Grupo con respecto a sí la Declaración, tal como estaba redactada, debería ser defendida hasta el fin, o sí los cambios que mejoren o fortalezcan el texto podrían ser considerados. Los proponentes de la última opinión aceptaron la realidad de la insistencia de los Estados en participar en la redacción de la versión final. Puede ser que tales diferencias de enfoque sean fructíferas y conduzcan a desplegar una gama de estrategias diferentes, no inconsecuentes, de compromiso en la defensa de la Declaración.

Como nota más alentadora, sigue habiendo movimiento en las posiciones de los Estados en el debate sobre la autodeterminación y los pueblos indígenas. Como se informó el año pasado, Francia acepta ahora el término pueblos indígenas y un concepto de autodeterminación, no obstante, calificado. En la 6ª sesión, la Federación de Pueblos Amerindios de Guyana felicitó a Francia por dar un paso adelante y hacer un importante esfuerzo hacia el reconocimiento de los derechos de los pueblos indígenas. En las intervenciones de Brasil se evidenciaron cambios positivos similares. Es inequívoco que los Estados nórdicos, los latinoamericanos, España y Suiza se mantuvieron generalmente dispuestos con simpatía con respecto a la Declaración. Tal simpatía ha asegurado que después de 6 sesiones del CHRWG, los principios básicos de cada previsión hayan sido respetados y la estructura básica de la Declaración siga intacta. También es evidente que estos Estados, al menos, están escuchando las intervenciones de las delegaciones indígenas. El resultado ha sido una atemperación del impacto del celo redactor de algunos Estados y un impedimento, hasta ahora, de los esfuerzos de infligir un daño irreparable a la Declaración.

EL FORO PERMANENTE DE LAS NACIONES UNIDAS SOBRE TEMAS INDÍGENAS

El 28 de julio de 2000, el Consejo Económico y Social (ECOSOC) de las Naciones Unidas tomó una decisión histórica cuando adoptó una resolución para establecer un "Foro Permanente sobre Temas Indígenas".

Esta decisión marca un hito fundamental en la lucha que los pueblos indígenas han venido llevando durante las últimas décadas para conseguir una posición dentro de la comunidad internacional. El nuevo organismo de la ONU integrará formalmente a los pueblos indígenas y sus representantes en la estructura de las Naciones Unidas. Es la primera vez que se otorga paridad a representantes de estados y a actores no-estatales en un organismo representativo permanente de las Naciones Unidas.

El Foro Permanente representa oportunidades únicas para realzar los derechos humanos, económicos, culturales y sociales de los pueblos indígenas. Sin embargo, todavía está por verse en qué medida su establecimiento marcará una diferencia para los pueblos indígenas del mundo. IWGIA es de la firme opinión que un Foro Permanente *podría* tener el potencial de convertirse en un catalizador para la mejora de los derechos de los pueblos indígenas de todo el mundo. Bajo la cobertura del sistema de las Naciones Unidas, el Foro Permanente es el mecanismo institucional más prometedor al que tendrán acceso los pueblos indígenas para consolidar el reconocimiento de sus derechos sociales, económicos y humanos; tenemos la esperanza de que su establecimiento consolidará y hará más eficiente desde el punto de vista financiero el trabajo de la ONU relativo a los pueblos indígenas.

En el año 2000, al establecer el Foro Permanente sobre Temas Indígenas, las Naciones Unidas se han acercado al cumplimiento de uno de los objetivos del Decenio Internacional de los Pueblos Indígenas del Mundo. La adopción de una declaración universal sobre los derechos de los pueblos indígenas es otro objetivo fundamental, que lamentablemente todavía está pendiente.

Datos históricos sobre el proceso que condujo al establecimiento del Foro Permanente sobre Temas Indígenas

La discusión relativa al establecimiento de un Foro Permanente sobre Temas Indígenas dentro del sistema de la ONU ha durado casi una década.

La idea de establecer un foro permanente que trate los temas indígenas derivó de la comprensión de los representantes indígenas, miembros de la Subcomisión del Grupo de Trabajo sobre Poblaciones Indígenas y muchos estados miembro de la ONU, de que no había un mecanismo permanente dentro del sistema de las Naciones Unidas para encarar los problemas de los pueblos indígenas del mundo.

Aunque la mención de la idea de un foro permanente puede encontrarse en varios documentos de la ONU, no fue hasta la Conferencia Mundial sobre Derechos Humanos de Viena en 1993 que fue seriamente considerada en la Agenda de las Naciones Unidas. La Declaración de Viena y el Programa de Acción recomendaron el establecimiento de un Foro Permanente. Ese mismo año, cuando la Asamblea General adoptó el programa de actividades para el Decenio Internacional de los Pueblos Indígenas del Mundo (1995-2004), identificó el establecimiento del Foro como uno de los principales objetivos del Decenio.

Desde entonces, el tema del establecimiento de un Foro Permanente sobre Temas Indígenas dentro del sistema de la ONU ha sido objeto de muchas deliberaciones y resoluciones del Grupo de Trabajo sobre Poblaciones Indígenas, la Subcomisión sobre la Discriminación y Protección de las Minorías, la Comisión de Derechos Humanos, ECOSOC y la Asamblea General. Se organizaron dos talleres de expertos sobre el tema, en Copenhague, Dinamarca (junio, 1995) y en Santiago de Chile (junio a julio, 1997), respectivamente. Entre los dos talleres se publicó una "Revisión de los mecanismos, procedimientos y programas existentes dentro de las Naciones Unidas concernientes a los Pueblos Indígenas". Esta Revisión, realizada por el Secretario General, ilustró claramente la necesidad de un mecanismo integrador y coordinador para pueblos indígenas dentro de las Naciones Unidas.

Además, desde la realización del primer taller, las organizaciones indígenas expresaron la necesidad de iniciar actividades indígenas centradas en la información, discusión y desarrollo estratégico con respecto al establecimiento del Foro entre las mismas organizaciones indígenas a nivel regional. Se celebraron cinco conferencias indígenas internacionales en Temuco (Chile), Kuna Yala (Panamá), Indore (India), Arusha (Tanzania) y Chiang Mai (Tailandia). Las declaraciones indígenas resultantes de esas conferencias y la Declaración de los Pueblos Indígenas del Ártico sobre el establecimiento del Foro Permanente fueron incluidas como documentación oficial de la ONU y como anexos en algunos de los informes de las reuniones de la ONU y tuvieron incidencia decisiva en el desarrollo de los debates en las reuniones oficiales.

Basándose en las recomendaciones de los seminarios de Copenhague y Santiago de Chile, la Comisión de Derechos Humanos adoptó una resolución en 1998 que abrió el camino para una nueva etapa en el proceso hacia el establecimiento del Foro Permanente. Esta resolución decidió establecer un Grupo de Trabajo *Ad Hoc* para elaborar y considerar propuestas para el posible establecimiento del Foro Permanente. Con respecto a la participación indígena, la resolución estableció que los indígenas se beneficiarían de los mismos procedimientos establecidos para el Grupo de Trabajo en el Proyecto de Declaración.

El Grupo de Trabajo se reunió por primera vez en 1999, y el avance más significativo realizado en esta sesión fue que se consolidó la idea de establecer un Foro Permanente y se lograron importantes progresos en discusiones sobre temas fundamentales como el mandato, el nivel y la composición.

Basándose en los resultados de esta primera sesión del Grupo de Trabajo Ad-Hoc , la Comisión de Derechos Humanos decidió renovar en 1999 el mandato del Grupo de Trabajo para que pudiera finalizar su trabajo. La segunda y última reunión del Grupo de Trabajo *Ad Hoc* fue celebrada en febrero de 2000, y en ella se consiguió que los gobiernos lograran un largamente aguardado consenso sobre el establecimiento del Foro Permanente para Pueblos Indígenas. Sobre la base de los acuerdos alcanzados en la 2ª reunión del Grupo de Trabajo *Ad Hoc*, el Gobierno danés patrocinó una resolución para el establecimiento del Foro Permanente sobre Temas Indígenas para la 56ª sesión de la Comisión de Derechos Humanos de la ONU. El 27 de abril de 2000 se adoptó la resolución para establecer un Foro Permanente sobre Temas Indígenas en su totalidad, mediante una votación por lista de 43 votos a favor y ninguno en contra, con nueve abstenciones.

En julio de 2000, el Consejo Económico y Social de las Naciones Unidas consideró la resolución de la Comisión de Derechos Humanos de la ONU y adoptó por consenso el establecimiento de un Foro Permanente sobre Temas Indígenas – un acontecimiento sin precedentes en la comunidad internacional. La Asamblea General endosó la decisión de ECOSOC en su Sesión del Milenio en diciembre del año 2000.

Breve descripción del Foro Permanente

El Foro Permanente sobre Temas Indígenas será un **organismo subsidiario del Consejo Económico y Social**. Estará integrado por **16 miembros**, ocho nominados por los gobiernos y electos por el Consejo y los otros ocho serán nombrados por el Presidente del Consejo a continuación de consultas formales con el buró sobre la base de amplias consultas con organizaciones y grupos indígenas. El proceso de selección deberá tomar en cuenta los principios de representatividad y la diversidad y distribución geográfica de los pueblos indígenas.

Todos los miembros del Foro actuarán en forma personal como expertos independientes sobre temas indígenas durante un período de tres años con la posibilidad de ser reelectos o vueltos a nombrar por un período más.

El Foro celebrará una sesión anual de diez días laborables en la Sede de las Naciones Unidas en Ginebra o en la Sede Central de las Naciones Unidas en Nueva York o en cualquier otro lugar que el Foro Permanente decida de acuerdo con los procedimientos y reglamentaciones financieras existentes de las Naciones Unidas.

Las reuniones serán abiertas como las del Grupo de Trabajo sobre Poblaciones Indígenas. Los Gobiernos, las organizaciones intergubernamentales, las ONGs así como las organizaciones de pueblos indígenas podrán participar como observadores en el Foro. Aunque el WGIP tiene sólo cinco miembros nombrados por los gobiernos, cientos de personas indígenas y otros han participado en sus reuniones durante años.

El Foro Permanente presentará un informe anual al Consejo de ECOSOC sobre sus actividades, incluyendo cualquier recomendación, para su aprobación; el informe será distribuido a los organismos, fondos, programas y agencias pertinentes de las Naciones Unidas.

La financiación del Foro Permanente provendrá de los recursos existentes a través del presupuesto regular de las Naciones Unidas y sus agencias especializadas y mediante eventuales donaciones.

Cinco años después de su establecimiento, ECOSOC realizará una evaluación del funcionamiento del Foro Permanente, incluyendo el método de selección de sus miembros.

Finalmente, está en cuestionamiento papel actual e incluso la existencia del Grupo de Trabajo de la ONU sobre Poblaciones Indígenas después del establecimiento del Foro. La resolución de ECOSOC establece sobre este punto que una vez que el Foro Permanente se haya establecido y haya celebrado su primera sesión anual, el Consejo revisará todos los mecanismos, procedimientos y programas existentes dentro de las Naciones Unidas relativos a temas indígenas, incluyendo el Grupo de Trabajo sobre Poblaciones Indígenas, con vistas a racionalizar las actividades, evitar la duplicación y la superposición y promoverla efectividad.

La división regional

El tema relativo a la forma de distribución geográfica de los ocho miembros indígenas ha sido un tema sobre el cual los pueblos indígenas han logrado alcanzar un consenso en el año 2000.

En una reunión de grupos indígenas celebrada en Ginebra el domingo 26 de noviembre de 2000, durante la 6ª Sesión del Grupo de Trabajo Intersesional Abierto sobre el Proyecto de Declaración de la ONU sobre los Derechos de los Pueblos Indígenas, los participantes discutieron minuciosamente el tema de la distribución geográfica de los miembros indígenas del Foro y acordaron que serían seleccionados ocho representantes de las siguientes regiones:

1. Ártico/Europa
2. África
3. Asia
4. América del Norte
5. América Central/América del Sur y el Caribe
6. Pacífico
7. Ex URSS y Europa Oriental

8. Un sitio adicional rotativo entre tres regiones – Asia, África y América Central / América del Sur y el Caribe.

El Grupo Indígena también acordó que América Central / América del Sur y el Caribe sería la primer región en ocupar el 8º sitio.

Esta división regional ha sido luego respaldada en varias reuniones indígenas donde se discutió el tema del Foro Permanente.

Desafíos pendientes

Sin embargo, restan muchos desafíos importantes antes del establecimiento definitivo del Foro Permanente y del comienzo de sus actividades en el año 2002, tal como está planeado.

Uno es la nominación de los ocho miembros indígenas del Foro. Los pueblos indígenas, a diferencia de los estados miembro de las Naciones Unidas, no disponen de estructuras organizacionales aprobadas a escala regional que les permitan nominar a sus representantes. Aunque la resolución hace referencia a amplias consultas del Presidente de ECOSOC con las organizaciones indígenas, no existen criterios para definir qué constituye una amplia consulta.

El primer proceso de nominación de los pueblos indígenas es de especial importancia por múltiples razones y los pueblos indígenas han puesto especial énfasis en que las consultas regionales organizadas por pueblos indígenas para la nominación de miembros indígenas es el mejor procedimiento "para asegurar una amplia consulta con las organizaciones indígenas" tal como se consagra en la resolución sobre el Foro Permanente sobre Temas Indígenas.

A menos que los pueblos indígenas tengan la posibilidad de nominar a sus representantes después de la realización de consultas lo más amplias posibles, se corre el riesgo de que muchos gobiernos pueden proponer o nominar el representante de los pueblos indígenas. Esto se haría obviamente sin la participación ni el consentimiento de los pueblos indígenas y sería contrario al espíritu del establecimiento del Foro Permanente.

Además, los pueblos indígenas también han expresado su preocupación sobre la circular enviada por el Alto Comisionado para los Derechos Humanos el 26 de febrero de 2001, invitando a las organizaciones de pueblos indígenas a presentar sus nominaciones de forma individual. Los pueblos indígenas creen que aunque solicitar nominaciones a diferentes organizaciones de pueblos indígenas podría facilitar la participación de todos los pueblos indígenas, está excluyendo los propios procesos de consulta regional de las organizaciones indígenas para la nominación de miembros indígenas. Si el Alto Comisionado para los Derechos Humanos de la ONU o el Secretariado del Foro Permanente reciben una gran cantidad de nominaciones de organizaciones indígenas de forma individual, los pueblos indígenas se verán efectivamente privados de la oportunidad de nominar miembros mediante sus propios procesos de consulta. Con tal panorama, el Secretariado estaría filtrando efectivamente a los miembros indígenas, contrariando de esta manera la resolución del Foro Permanente.

Desde el punto de vista de IWGIA, el Foro sólo será capaz de jugar un rol importante si está estrechamente vinculado a las organizaciones y comunidades indígenas; si este tipo de conexión no existe, el Foro correrá el riesgo de convertirse en una entidad desprendida de la realidad.

Otro problema pendiente es la ubicación del Secretariado del Foro. Los representantes de los pueblos indígenas han demandado consecuentemente que el Foro Permanente tenga su propio secretariado con personal indígena. Còmo el Foro está establecido directamente bajo ECOSOC y se ocupa de muchos otros temas que los derechos humanos, los pueblos indígenas han enfatizado vehementemente que debería ser independiente y no estar ubicado bajo el Alto Comisionado para los Derechos Humanos (HCHR). Los pueblos indígenas han expresado repetidamente que la falta de un secretariado independiente para el Foro Permanente obstaculizará seriamente el cumplimiento del mandato del Foro Permanente. También han subrayado la importancia de dar "preferencia a los candidatos indígenas igualmente calificados" para la integración del personal del Secretariado del Foro Permanente. Actualmente, todavía no está claro si el Secretariado del Foro Permanente será ubicado en la Sede Central de las Naciones Unidas en Nueva York o en la sede de Ginebra de la ONU.

Todavía queda por verse en qué medida algunos gobiernos y la burocracia de la ONU aprovecharán la oportunidad, quizá con la excusa de ahorrar dinero, para ubicar al Secretariado del Foro Permanente bajo el HCHR y, así, indirectamente intentar restringir su competencia.

Comentarios finales

Ahora, en el sexto año del "Decenio Internacional de los Pueblos Indígenas del Mundo", el establecimiento del Foro Permanente sobre Temas Indígenas constituye el paso más significativo y concreto dado hasta el momento por el sistema de las Naciones Unidas para tratar los temas únicos que enfrentan los pueblos indígenas. IWGIA considera esto como el primer indicio de un intento político de poner en práctica los objetivos del Decenio, que la ONU resumió como el fortalecimiento de la cooperación internacional para la solución de los problemas que enfrentan los pueblos indígenas del mundo.

Sin embargo, IWGIA es completamente consciente de algunas de las limitaciones y problemas del Foro Permanente en su forma actual. El Foro Permanente sobre Temas Indígenas, como está establecido, no satisface la totalidad de las aspiraciones de los pueblos indígenas, pero en nuestra forma de ver, aunque el Foro Permanente no sea una construcción ideal, es un compromiso que después de todo constituye el primer organismo dentro del sistema de la ONU en el que están representados los pueblos indígenas. Nunca un organismo de este tipo puede ser perfecto ni ideal, pero todas las partes interesadas deben realizar todos los esfuerzos para hacerlo lo más ideal posible. Además, no debe olvidarse que en última instancia, la efectividad del Foro Permanente no depende solamente de los miembros individuales del Foro sino también de la competencia, la credibilidad y la legitimidad de aquellos que quieren influir en su trabajo. Finalmente, el funcionamiento y las obras del Foro Permanente constituyen un proceso a ser continuamente mejorado.

HACIA LA INTEGRACIÓN DE PAÍSES NO-INDEPENDIENTES EN EL SISTEMA DE LAS NACIONES UNIDAS

La integración de países no-independientes (PNIs) en programas y actividades del sistema de las Naciones Unidas es un importante elemento en la promoción del proceso de autodeterminación para aquellos PNIs que *no* son autónomos y también para el proceso general de desarrollo de los PNIs *autónomos*. Como lo define las Naciones Unidas, los modelos legítimos de gobierno se logran a través de la independencia, la libre asociación o la integración con plenos derechos políticos.[1] Los estados independientes tienen pleno acceso al sistema de la ONU, mientras que los países no-independientes, incluyendo los no-autónomos y los territorios autónomos, tienen un acceso parcial y con frecuencia inconsecuente.

Tabla 1. Países no-independientes tal como los define los Principios de las Naciones Unidas

No-autónomos	Territorios autónomos	Antiguos territorios que fueron integrados (sólo con propósito de comparación)
Caribe: Anguilla Bermuda Holandesa Islas Vírgenes Británicas Islas Caimán Montserrat Islas Turks y Caicos Islas Vírgenes de los EE.UU.	Aruba Antillas Holandesas Puerto Rico	Guadalupe y dependencias Martinica Guayana Francesa
Pacífico: Samoa Norteamericana Guam Nueva Caledonia Tokelau	Islas Marianas Septent. Islas Cook Micronesia (Estados Federados) Islas Marshall Belau (Palau) Polinesia Francesa Wallis y Futuna	Hawaii

La naturaleza autónoma de Puerto Rico y de las Islas Marianas Septentrionales respecto a sus respectivos acuerdos de "mancomunidad" con los Estados Unidos ha impulsado un interés creciente de los académicos debido a la continua autoridad unilateral del Congreso de los EE.UU. en cuanto a la legislación para esos territorios "autónomos". Las limitaciones a la soberanía ejercida en los Estados Federados de Micronesia, las Islas Marshall y Belau, después de su acuerdo de libre asociación con los EE.UU., también están siendo revisadas por la comunidad académica. La remoción unilateral de la Polinesia Francesa y Wallis y Futuna del estatus de territorios no-autónomos de la ONU sin una revisión por parte de la ONU es otra área de debate. Además, algunos territorios como la Isla de Pascua, administrada por Chile, no son siquiera considerados apropiados para la discusión en el debate de la autonomía.[2]

Autoridad legislativa

En lo que respecta a la participación de los países no-independientes en el sistema de las Naciones Unidas, es importante reconocer que la Asamblea General de la ONU ha tenido el tema en su agenda (especialmente con respecto a los territorios no-autónomos) desde 1950.[3] Es de destacar la Resolución 566 de 1952 que reconoció que la asociación directa de países no-independientes en la ONU era un medio efectivo para promover el progreso de los pueblos de esos territorios. Durante las décadas de 1960 hasta 1980, la Asamblea General siguió tratando la cuestión.

En la década de 1990, la Asamblea General y el Consejo Económico y Social (ECOSOC), aprobaron una serie de resoluciones en favor de una asociación más estrecha entre los territorios no-autónomos y el sistema de la ONU. A este respecto, tanto la Asamblea como ECOSOC repitieron la necesidad de una formulación de programas de asistencia para los territorios no-autónomos – un lenguaje similar al usado en décadas anteriores con relación a los grupos de liberación. La ONU continuó expandiendo su perspectiva durante este período requiriendo a sus diversos organismos que trabajaran con vista a la aceleración del progreso en los sectores económico y social de los territorios. También requirió a sus organismos que facilitaran la participación de representantes de los gobiernos electos en reuniones y conferencias relevantes de las agencias y organizaciones de la ONU *"para que pudieran obtener beneficios máximos de las actividades conexas de las agencias especializadas y otras organizaciones del sistema de la ONU"*.

Hacia la integración en el sistema de la ONU

Una serie de organizaciones de la ONU ha tratado de implementar este mandato. En el caso de las agencias especializadas, se hicieron acomodamientos para que los países no-independientes en general alcanzaran una membrecía asociada o estatus de observador, dependiendo de los términos de referencia y reglas de procedimiento del pertinente organismo específico de la ONU. En la *Declaración del Gobierno de las Islas Vírgenes de* *los EE.UU. ante el Cuarto Comité de la ONU* del 2000, el representante reveló que *"sólo siete de las 14 agencias especializadas tienen las provisiones necesarias dentro de sus reglas de procedimiento para la directa participación (de los países no-independientes)"*.[4] Los organismos específicos listados eran la Organización de la Alimentación y Agricultura (FAO); la Organización Marítima Internacional (IMO); la Organización Internacional de la Aviación Civil (ICAO); la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura (UNESCO); la Unión Postal Universal (UPU); la Organización Panamericana de la Salud (PAHO) y la Organización Meteorológica Mundial (WMO). Desgraciadamente, la cantidad de territorios directamente participantes en los programas de estos y otros organismos de la ONU sigue siendo insuficiente, y este déficit de participación puede ser remediado solamente a través de la activa implementación del antiguo mandato sobre la asistencia de los países no-independientes contenido en las resoluciones sobre el tema desde hace casi medio siglo.

Comisiones regionales de la ONU

Quizá la implementación más exitosa del mandato sobre la participación de países no-independientes haya sido realizada por las comisiones regionales de la ONU – aunque con deliberada cautela y pasividad. La Comisión Económica para América Latina y el Caribe (ECLAC) y la Comisión Económica y Social para Asia y el Pacífico (ESCAP) han sido especialmente activas en la extensión del estatus de miembros asociados de los países y territorios "dentro del ámbito geográfico" de trabajo de la comisión. En este caso, con la notable excepción de Tokelau, nueve de los diez Países No-Independientes del Pacífico son miembros asociados en ESCAP, mientras que siete de los diez Países No-Independientes del Caribe gozan del mismo estatus en ECLAC.

La participación de los miembros asociados en ECLAC, por ejemplo, ha sido reforzada por la existencia del Comité subregional para la Cooperación y Desarrollo del Caribe (CDCC), un organismo intergubernamental independiente de pequeños países isleños caribeños, con los servicios del Secretariado de ECLAC. Dentro del CDCC se formó un Grupo de Trabajo de Países No-Independientes del Caribe en 1990 que condujo los esfuerzos dentro del sistema más amplio de la ONU en favor de una mayor inclusión y participación de países no-independientes del Caribe y del Pacífico. La decadencia y la virtual desaparición del CDCC a comienzos del último cuarto de la década de 1990 - como organismo ministerial funcional con el concomitante apoyo político de los gobiernos regionales así como los esfuerzos del Secretariado del CDCC para desviar el programa de trabajo del Grupo de cualquier asunto considerado controversial en lo más mínimo, hizo más difícil sostener los esfuerzos del Grupo de Trabajo.

Tabla 2. Miembros Asociados actuales de la Comisión Económica para América Latina y el Caribe

País	Fecha de Admisión	Resolución de Admisión
Montserrat [a/]	23 de abril, 1968	283 (AC.61) [b/]
Antillas Holandesas	14 de mayo, 1981	445 (XIX)
Islas Vírgenes Británicas	6 de abril, 1984	453(XX)
Islas Vírgenes (EE.UU.)	6 de abril, 1984	454(XX)
Aruba	22 de abril, 1988	490(XXII)
Puerto Rico	10 de mayo, 1990	505(XXIII)
Anguilla	20 de abril, 1996	561(XXVI)

[a] Los Estados Asociados de las Indias Occidentales, incluyendo a Montserrat, fueron admitidos como un solo miembro asociado.
[b] Comité de la Resolución Total.
Fuente: *Working Group of Non-Independent Caribbean Countries, Caribbean Development and Cooperation Committee.*

Conferencias Mundiales y Sesiones Especiales de la Asamblea General de la ONU

El impulso del Grupo de Trabajo continuó a pesar de la falta de apoyo de los remanentes del CDCC, en conjunción con otros organismos intergubernamentales como el Foro de Administradores de la Costa, integrado por los territorios del Caribe y del Pacífico de los EE.UU., es decir: Samoa Americana, Guam, Islas Marianas Septentrionales, Puerto Rico y las Islas Vírgenes de los EE.UU. Por razones estratégicas y prácticas, se cambió el enfoque para concentrarse en la participación de los países miembros asociados – los países no-independientes que ya eran miembros asociados de ECLAC y ESCAP- en las conferencias mundiales de las Naciones Unidas. Ya se habían iniciado esfuerzos a comienzos de los 90, bajo la dirección del presidente fundador del Grupo de Trabajo, el Gobierno de las Islas Vírgenes de los EE.UU., en favor de la participación de miembros asociados en las conferencias mundiales venideras de la ONU en la esfera económica y social. El primer paso para aumentar la participación en las conferencias mundiales de la ONU de los miembros asociados de las comisiones económicas regionales se dio en relación con la Conferencia sobre Medio Ambiente y Desarrollo de la ONU (UNCED) en 1992. Apoyada por la recién formada Alianza de Pequeños Estados Isleños (AOSIS) en la ONU, se adoptó una resolución en el comité preparatorio para otorgar estatus de observador en UNCED a los miembros asociados de las comisiones económicas regionales.

BEST COPY AVAILABLE

Este objetivo no fue fácil de alcanzar debido a las curiosas objeciones planteadas por el representante de un país desarrollado que administraba territorios, a pesar de que los "poderes administradores" no estaban políticamente amenazados por la inclusión de países no-independientes en una conferencia sobre el medio ambiente. La objeción aislada fue finalmente retirada después de varios días de debate informal, dando como resultado la nueva regla para la participación de miembros asociados en la Cumbre de la Tierra celebrada en Brasil en 1992 que planteó que:

> *"Los representantes designados por miembros asociados de las comisiones regionales pueden participar como observadores, sin el derecho al voto, en las deliberaciones de la conferencia, el Comité Principal y, si fuera apropiado, cualquier otro comité o grupo de trabajo".*

Irónicamente, el presidente del Grupo de Trabajo que facilitó el logro de esta histórica categoría de estatus de observador no pudo asistir a la Conferencia de Río debido a la no disponibilidad de recursos provenientes de dentro o fuera del sistema de la ONU. Los miembros asociados de ESCAP se vieron beneficiados por este esfuerzo. La decisión de UNCED pavimentó el camino para aprobaciones similares para la participación de los miembros asociados de ECLAC y ESCAP en subsiguientes conferencias mundiales de la ONU entre 1992 y 1996, como ser la Conferencia de la ONU sobre Operaciones Comerciales y Poblaciones de Peces Altamente Migratorios (1993-95, Nueva York), la Conferencia Global sobre el Desarrollo Sustentable de los Pequeños Estados Isleños en Desarrollo (1994, Barbados), la Conferencia Internacional sobre Población y Desarrollo (1994, Cairo), la Conferencia Internacional sobre la Reducción de Desastres Naturales (1994, Yokohama), la Cumbre Mundial para el Desarrollo Social (1995, Copenhague), la Cuarta Conferencia Mundial sobre la Mujer (1995, Pequín) y la Conferencia de la ONU sobre Asentamientos Humanos (1996, Estambul).

Acontecimientos recientes

Las recientes actividades de los miembros asociados de los países no-independientes se han centrado en la participación en las sesiones especiales de la Asamblea General de la ONU, otro paso en dirección a la integración en el sistema de la ONU. Partiendo de la premisa de que estos países habían participado en las conferencias mundiales en los años 90, lo único razonable era que fueran elegibles para la participación en las sesiones especiales de la Asamblea General que fueran organizadas para "revisar y evaluar la implementación del programa de acción" de estas conferencias mundiales.

Se tomaron decisiones acordes, siguiendo al Presidente del Grupo de Trabajo de Países No-Independientes del Caribe, quien abogó por la inclusión de la participación de estos países como observadores en la sesión especial de la ONU para Revisar y Evaluar la Implementación del Programa de Acción de la Conferencia Mundial sobre el Desarrollo Sustentable de Pequeños Estados Isleños (1999, Nueva York) y para revisar el Plan de Acción del Cairo sobre Población y Desarrollo (1999, Nueva York). Otros esfuerzos recientes tuvieron éxito en obtener un idéntico estatus de observador en la revisión de la Asamblea General de junio de 2001 de la Conferencia de la ONU sobre Asentamientos Humanos de 1996, mientras que actualmente se realizan esfuerzos con respecto a la participación en la Sesión Especial de la Asamblea General sobre HIV/SIDA planificada para junio de 2001. Además, a los miembros asociados se les otorgó estatus de observador en la próxima Conferencia Mundial de la ONU Contra el Racismo, la Discriminación Racial, la Xenofobia y la Intolerancia Conexa, programada para septiembre de 2001, mientras que también se intenta obtener el mismo estatus en la revisión decenal de la Asamblea General de la Cumbre de la Tierra de 1992. Más recientemente, las reglas de procedimiento de la Segunda Asamblea Mundial sobre la Vejez del 2002 han incluido la previsión de estatus de observador para los miembros asociados.

Después de más de diez años de trabajo, la categoría de participación para los países miembros asociados en conferencias mundiales relevantes y sesiones especiales de la Asamblea General parece estar bastante consolidada, aunque todavía debe solicitarse una consideración especial para cada conferencia para asegurar la inclusión de la categoría de estatus de observador.

Para que los territorios no-autónomos puedan alcanzar su plena autonomía y para que los territorios autónomos progresen económicamente así como constitucionalmente, deben tener acceso directo a la amplia gama de programas e instituciones de la ONU. Y el sistema de la ONU debe continuar ampliando su enfoque hasta abarcar los intereses desarrollistas de todos los pequeños estados isleños en desarrollo, independientemente de su estatus político.

Notas y referencias

[1] Ver Anexo de la Resolución 1541 (XV) de 1960 de la Asamblea General de la ONU.

[2] United Nations Association of the Virgin Islands, St. Thomas, USVI, 1999.

[3] Ver Resolución 66-1 de 1950 de la Asamblea General de la ONU, la cual reconoció el valor de la participación de los territorios no-autónomos en agencias especializadas de la ONU. En 1950, los pequeños territorios autónomos isleños de hoy no eran autónomos.

[4] Ver la Declaración del Dr. Carlyle Corbin, Ministro de Estado para Asuntos Externos, Gobierno de las Islas Vírgenes de los EE.UU., ante el Cuarto Comité de las Naciones Unidas sobre el punto de la agenda "Implementación de la Declaración de Descolonización por las Agencias Especializadas y las instituciones internacionales asociadas con las Naciones Unidas", 28 de septiembre de 2000.

PARTE III

PUBLICACIONES DE IWGIA

PUBLICACIONES DE IWGIA 2000/2001 (mayo de 2001)

EN INGLES

No. 104: **Kathrin Wessendorf (ed.):** *Challenging Politics: Indigenous Peoples' Experiences with Political Parties and Elections* (2001), 291 pág.
US$ 19.00; GBP 13.00; DKK 150,00
ISBN: 87-90730-45-3

No. 103: **Rosalva Aída Hernández Castillo (ed.):** *The Other Word: Women and Violence in Chiapas Before and After Acteal* (2001), 151 pág.
US$ 13.50; GBP 9.20; DKK 108,00
ISBN 87-907730-43-7

No. 102: **Jens Dahl, Jack Hicks, Peter Jull (eds.):** *Nunavut: Inuit Regain Control of their Lands and their Lives* (2000) 223 pág.
US $ 16.00; GBP 11.20; DKK 120,00
ISBN: 87-90730-34-8

No. 101: **Alberto Kwokwo Barume:** *"Heading Towards Extinction? Indigenous Rights in Africa: The Case of the TWA of the Kahuzi-Biega National Park, Democratic Republic of Congo"* (2000), 142 pág.
US$ 14.00; GBP 9.80; DKK 105,00
ISBN: 87-90730-31-3

Update Report 4, *"Life is not ours" Land and Human Rights in the Chittagong Hill Tracts, Bangladesh,* (2000) 101 pág.
US$ 10.00, GBP 7.00; DKK 75,00
ISBN: 87-90730-42-7

No. 99: **Rajkumari Chandra Roy:** *Land Rights of the Indigenous Peoples of the Chittagong Hill Tracts, Bangladesh* (2000), 231 pág.
US$ 16.00; GBP 11.20; DKK 120,00
ISBN: 87-90730-29-1

No. 98: **Andrew Madsen:** *The Hadzabe of Tanzania. Land and Human Rights for a Hunter-Gatherer Community* (2000), 96 pág.
US$ 11.00; GBP 7.70; DKK 90,00
ISBN: 87-90730-26-7

No. 97: **Marcus Colchester and Christian Erni:** *Indigenous Peoples and Protected Areas in South and Southeast Asia: From Principles to Practice* (2000), 334 pág.
US$ 20.00; GBP 14.00; DKK 150,00
ISBN: 87-90730-18-6

Indigenous Affairs 2000

1/2000 The Pacific
2/2000 Hunters & Gatherers
3/2000 Indigenous Women
4/2000 Indochina

Indigenous Affairs 2001

1/2001 Racism
2/2001 Military Training
3/2001 China
4/2001 International Processes

EN ESPAÑOL

Jens Dahl & Alejandro Parellada: *Pueblos Indígenas* (2000) 125 pág.,
US$ 15.00, GBP 10.50; DKK 115,00
ISBN: 87-90730-30-5

No. 30: **Morita Carrasco:** *Los Derechos de los pueblos indígenas en Argentina* (2000), 354 pág.,
US$18.00; GBP 12.60; DKK 135,00
ISBN 950-843-429-5

No. 29: **Claudia Briones, Morita Carrasco:** *Pacta sunt Servanda. Capitulaciones, Convenios y Tratados con Indígenas en Pampa y Patagonia, Argentina* (2000), 211 pág.,
US$ 13.00; GBP 9.10; DKK 97,00
ISBN 950-843-423-6

Asuntos Indígenas 2000

1/2000 Latinamérica - El Pacífico
2/2000 Cazadores & Recolectores
3/2000 Mujeres Indígenas
4/2000 Indochina

Asuntos Indígenas 2001

1/2001 Racismo
2/2001 Entrenamiento Militar
3/2001 China
4/2001 Procesos Internacionales

EN FRANCES

Voix Africaines, Pasteurs nomades et chasseurs-cueilleurs en Afrique sub-Saharienne (2001) (traducción de *Indigenous Affairs* no. 2/99 sobre cazadores/recolectores y pastoralistas en Africa), 121 pág.,
US$ 10.50 ; FF 75.00 ; DKK 85,00
ISBN 2-912114-04-7

EN SWAHILI

Marianne Jensen and Greta M. Maganga (eds.) *Wenyeji Asilia Katika Afrika Mashariki, Kati Na Kusini* (traducción de *Asuntos Indígenas* no. 2/99 sobre cazadores/recolectores y pastoralistas en Africa) 2001, 148 pág.,
US$ 10.50; GBP 7.30; DKK 85,00
ISBN 87-90730-44-5

EN TAGALOG (FILIPINAS)

Katutubong Mamamayan
(Traducción del libro en español *Pueblos Indígenas*) 2001, 131 pág.

EN BAHASA (INDONESIA)

Masyarakat Adat di Dunia - Eksistensi Dan Perjuangannya
(traducción del libro en español *Pueblos Indígenas*) 2001, 139 pág.

EN DANES

Hvem er de indfødte folk?

2. *Van Gujar - Et skovfolk i indisk Himalaya*, Sille Stidsen & IWGIA
3. *De Indfødte Australiere*, Hanne Miriam Larsen & IWGIA
4. *Buskmennesker - Et folk i Kalahari Ørkenen*, Arthur Krasilnikoff & IWGIA
5. *Indianer i Danmark - Shuar i Ecuador*, Birgitte Feiring & IWGIA
6. *Indianske folk i Perus Andesbjerge*, Karsten Pærregaard & IWGIA
7. *Naga - Et folk mellem Indien og Burma*, Shimreichon Luithui & IWGIA

DKR 25,00, IWGIA 2000, ISSN 1399-9540

PRECIOS DE SUBSCRIPCION - 2001

ASUNTOS INDIGENAS & El MUNDO INDIGENA

Particulares: 40,00 US$ / 310,00 DKK
Instituciones: 70,00 US$ / 545,00 DKK

ASUNTOS INDIGENAS & El MUNDO INDIGENA & LIBROS

Particulares: 75,00 US$ / 585,00 DKK
Instituciones: 110,00 US$ / 860,00 DKK

INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD

Particulares: 40,00 US$ / 310,00 DKK
Instituciones: 70,00 US$ / 545,00 DKK

INDIGENOUS AFFAIRS & THE INDIGENOUS WORLD & BOOKS

Particulares: 95,00 US$ / 740,00 DKK
Instituciones: 135,00 US$ / 1.050,00 DKK

Las publicaciones de IWGIA son editadas sin fines de lucro. Toda suscripción a nuestras publicaciones es una directa contribución a fines de que IWGIA pueda seguir elaborando análisis y documentación sobre la situación de los pueblos indígenas del mundo.

Las publicaciones de IWGIA pueden solicitarse a través de:

e-mail: iwgia@iwgia.org
website: www.iwgia.org
o fax: +45 35 27 05 07

BEST COPY AVAILABLE

IWGIA - DIRECCIONES

Secretaría internacional

Classensgade 11 E, DK-2100 Copenhague, Dinamarca
Tel. (+45) 35 27 05 00 – Fax (+45) 35 27 05 07
E-mail: iwgia@iwgia.org - Web: www.iwgia.org

Grupos locales

Dinamarca, Copenhague
Classensgade 11 E, DK-2100 Copenhague, Dinamarca
E-mail: wiinstedt@mail.tele.dk

Suecia, Gotemburgo
c/o Inst. of Social Anthropology,
Brogatan 4, S-41 301 Gotemburgo, Suecia
E-mail: iwgia@goteborg@sant.gu.se

Noruega, Tromsø
c/o Sidsel Saugestad
Institut for Socialantropologi
Universitetet i Tromsø
9037 Tromsø, Noruega
E-mail: sidsels@isv.uit.no

Suiza, Zurich
c/o Ethnologisches Seminar
der Universität Zürich
Freienstrasse 5, CH-8032 Zurich, Suiza
E-mail: daniwgia@ethno.unizh.ch

Suiza, Basilea
c/o Ethnologisches Seminar
Münsterplatz 19
CH-4051 Basilea, Suiza
E-mail: iwgia@kali.urz.unibas.ch

Rusia, Moscú
Olga A. Murashko
117574, Odoevskogo, st.7-5-595, Moscú, Rusia
E-mail:olga@murkre.aha.ru

BEST COPY AVAILABLE

EL MUNDO INDIGENA
2000-2001

El informe anual de IWGIA consiste en una actualización del estado en que se encuentran los asuntos relativos a los pueblos indígenas del mundo. Se publica anualmente en el mes de junio.

Con la contribución de investigadores y activistas indígenas y no-indígenas, *El Mundo Indígena 2000-2001* ofrece un panorama de la situación actual de los pueblos indígenas del mundo así como de los momentos cruciales vividos por estos pueblos en el año 2000 y principios de 2001.

El informe anual contiene además

- información actualizada sobre el trabajo internacional sobre Derechos Humanos en relación con los pueblos indígenas
- movimientos y cambios en el espectro organizativo de estos pueblos

El Mundo Indígena representa el manual indispensable para todo aquel que necesite un panorama general de los movimientos y hechos más recientes ocurridos entre los pueblos indígenas del mundo.

IWGIA
GRUPO INTERNACIONAL
DE TRABAJO SOBRE
ASUNTOS INDIGENAS

ISBN 87-90730-4

BEST COPY AVAILABLE